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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 390 (ALC)

5 DAVID TAYLOR,

Defendant.

Trial

6 -----x

7
8 New York, N.Y.
9 December 4, 2018
9:30 a.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

16 BY: KIERSTEN A. FLETCHER

17 JUSTIN V. RODRIGUEZ

NICOLAS T. ROOS

18 Assistant United States Attorneys

19 CHARLES F. CARNESI

Attorney for Defendant

20 Also Present:

21 Matthew Del Rosario, Special Agent DEA

22 Rosanna Corrado, Paralegal Specialist

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(Trial resumed; jury not present)

THE COURT: Are we all on the same page regarding the demonstrative exhibits? Has the government shown defense counsel your demonstrative exhibits?

MR. RODRIGUEZ: We have, your Honor.

THE COURT: Any objection to it by the defense?

MR. CARNESI: No, your Honor.

THE COURT: OK.

Regarding the jury instructions, there will be some sort of occasional misspellings, grammatical errors. I will just edit those on the fly, and then we will make those changes later. There are a couple of things that I've seen already that I think should be changed, and I will run that by counsel.

On page 16 of the jury instructions -- again, these aren't substantive changes -- the first sentence of that first full paragraph, "which I will explain to you shortly and knowing the specific objective of a conspiracy, on the other" I think we should delete that "on the other" because we don't talk about the first hand. So I think we should delete that "on the other."

Any objection by the government or the defense?

MR. RODRIGUEZ: No, Judge.

MR. CARNESI: No.

THE COURT: OK.

The penultimate paragraph on that page, the paragraph

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1 that starts "in sum" on that same page. It says, "In sum, if
2 you find that the defendant believed that this was a high
3 probability," I believe that should be "there was a high
4 probability."

5 Any objection to that by the government or the
6 defense?

7 MR. RODRIGUEZ: No, your Honor.

8 MR. CARNESI: No, your Honor.

9 THE COURT: OK. I will make that change.

10 MS. FLETCHER: Your Honor?

11 THE COURT: Yes.

12 MS. FLETCHER: There is one more in that paragraph.

13 THE COURT: OK.

14 MS. FLETCHER: The second-to-last line, "knowingly
15 with respect to at a fact." I think that's supposed to be "to
16 that fact."

17 THE COURT: Maybe that didn't get -- you are on that
18 same sentence?

19 MS. FLETCHER: Same page, page 16, second sentence
20 from the end of that section.

21 THE COURT: Yes. "At" should be "that." I will make
22 that change as well.

23 Has everyone seen that?

24 Any objection to that by the defense.

25 MR. CARNESI: No, your Honor.

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1 THE COURT: OK. I will make that change.

2 This is slightly substantive. It is not huge. But on
3 page 26, "Use of Recordings and Transcripts," the last
4 paragraph in that section.

5 It reads currently, "If you wish to view any of the
6 recordings or transcripts, they will be made available to you
7 during your deliberations."

8 It seems to me that the transcripts that we are
9 talking about in this section were the transcripts that were
10 given to them in aid of their listening to the recordings. I
11 don't think it would be appropriate to give them the
12 transcripts without them listening to the recordings and seeing
13 the recordings at the same time. So it makes sense to me to
14 perhaps change -- also, one of the recordings didn't have a
15 visual component to it. It may make sense to say, if you wish
16 to view or hear any of the recordings with transcripts, they
17 will be made available to you and repeat during your
18 deliberations or cut that.

19 Any objection that or any comment on that by the
20 government or the defense?

21 MR. CARNESI: Judge, I would object to the
22 transcripts, since they are not evidence, going into the jury
23 room at any point. If the jury wants to listen --

24 THE COURT: They are not going into the jury room,
25 which is why I was thinking about cutting the "during your

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1 deliberation." If they want to view or to hear the recordings,
2 they are going to be brought out here.

3 MR. CARNESI: OK, Judge. I didn't understand that.

4 THE COURT: That's fine.

5 They will be brought out here, they will be played for
6 them and then they will be provided the transcripts.

7 MR. CARNESI: That's fine.

8 THE COURT: But neither the recordings nor the
9 transcripts are going into the deliberations room. That is at
10 least my position unless counsel has a different view of
11 things.

12 MR. RODRIGUEZ: That's fine, Judge.

13 THE COURT: Any objection to that change then in terms
14 of the wording of that last sentence?

15 MR. RODRIGUEZ: No objection.

16 MR. CARNESI: No, your Honor.

17 THE COURT: Because that is what is going to happen.
18 They will be brought out here. I don't know if it is necessary
19 to tell them that in the instructions. Maybe we just cut out
20 that last prepositional phrase "during your deliberations" and
21 say they will be made available to you.

22 Any objection to that by the government or the
23 defense?

24 MR. RODRIGUEZ: No objection.

25 MR. CARNESI: No, your Honor.

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1 THE COURT: All right. Again, there will probably be
2 some other things, and I will just make those edits on the fly.

3 Is there anything else we need to address before the
4 jury comes in?

5 Counsel for the government?

6 MS. FLETCHER: Not for the government, your Honor.

7 THE COURT: For the defense?

8 MR. CARNESI: No, your Honor.

9 THE COURT: We will just wait for the jury to get
10 here. Is there any update in terms of length of summations?
11 Let's get an update and see if they've gotten a little shorter.
12 Hopefully they haven't gotten longer.

13 What is the government's estimate.

14 MR. RODRIGUEZ: Your Honor, I think we mentioned last
15 time we expect it to be under an hour we still expect it to be
16 under an hour, 45 minutes.

17 THE COURT: OK. Defense counsel?

18 MR. CARNESI: Between half an hour to 45 minutes,
19 Judge.

20 THE COURT: All right. We'll see how it goes.

21 Is the jury here?

22 THE DEPUTY CLERK: Yes, Judge.

23 THE COURT: Are we ready to bring the jury in?

24 MR. RODRIGUEZ: Yes your Honor.

25 THE COURT: Where the demonstrative exhibits.

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1 MR. RODRIGUEZ: The government will only be using a
2 PowerPoint presentation. We contemplated using a face board as
3 well. We are not using that. It will just be a PowerPoint
4 presentation that will appear on the screens throughout the
5 courtroom.

6 THE COURT: Defense counsel has seen it and has no
7 objection?

8 MR. CARNESI: I have no objection.

9 THE COURT: All right. Let's bring in the jury.
10 Actually, Tara, hold on just a second.

11 Another thing to make clear if I haven't made it clear
12 to counsel before, we are going to give each of the jurors a
13 written copy of the jury instructions. I will tell them that
14 when I get to charge them.

15 OK. Let's bring in the jury.

16 (Jury present)

17 THE COURT: Please be seated.

18 Welcome back. We are now going to have closing
19 arguments by counsel. The closing arguments are not evidence,
20 but you should listen to the closing arguments.

21 If counsel states a fact in their closing argument
22 that is different than your recollection of the facts, it is
23 your recollection that controls.

24 We will start off with the government's summation.
25 Then, if the defense wishes to have a summation, they will

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Summation - Mr. Rodriguez

1 provide a summation. Then the government will have a rebuttal
2 summation if they choose.

3 We will start with summation, closing argument by the
4 government.

5 MR. RODRIGUEZ: David Taylor is a drug dealer. He
6 betrayed his oath as a doctor and he broke the law.

7 For years Taylor supplied Vito Gallicchio and the
8 members of his crew with enormous amounts of oxycodone that
9 Taylor knew they did not need. He did this in exchange for a
10 steady stream of easy money and gifts.

11 David Taylor did not run a medical practice. He ran a
12 pill mill. And he knew exactly what he was doing.

13 He did not provide medical treatment to patients. He
14 maintained a facade. He went through the motions with his fake
15 examinations, almost nonexistent at times, and he covered his
16 tracks by writing bogus notes in the patient charts.

17 He supplied a network of drug traffickers with the
18 pills that were needed to fuel opioid addictions that destroy
19 lives and devastate communities.

20 That's why we are here today. We are here to finally
21 hold that man, the defendant, accountable for his crime.
22 Because of what he did, David Taylor is charged in a one-count
23 criminal indictment.

24 Now, at the end of this trial, Judge Carter will
25 instruct you on the law. What Judge Carter says controls, and

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Summation - Mr. Rodriguez

1 you should follow all of his instructions, but for now I will
2 just note that the indictment alleges that David Taylor
3 conspired or agreed with other people to distribute oxycodone
4 in violation of the law. That is, David Taylor agreed to
5 prescribe oxycodone to people that he knew did not need it.
6 That's what this case is about.

7 Now, as you've heard, it's perfectly lawful for a
8 legitimate doctor to issue a legitimate medically necessary
9 prescription for oxycodone. But, as I expect Judge Carter will
10 explain, when a doctor acts outside the regular course of
11 professional practice and issues medically unnecessary
12 prescriptions for controlled substances, he is no longer acting
13 lawfully. That doctor is acting as a drug dealer.

14 Now, there's not much that's really in dispute in this
15 case, so let's briefly talk about what's seemingly not in
16 dispute here.

17 There is no dispute that David Taylor was a medical
18 doctor who at times operated out of three offices on Staten
19 Island, an office on Victory Boulevard, then at New You Medical
20 and Dental Pavilion on Castleton Avenue. Lisa Mercado, who
21 used to work at that office as the office manager, told you
22 about how there was a time when David Taylor got kicked out of
23 this office. After that, he went on to another office on Hyman
24 Boulevard.

25 There is also no dispute that from July 2012 to June

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Summation - Mr. Rodriguez

1 2017 David Taylor wrote over 21,000 prescriptions for oxycodone
2 pills. As you now know quite well, oxycodone is a powerful and
3 highly addictive painkiller that is similar in chemical makeup
4 to heroin.

5 You heard from Dr. Gharibo, who helped design the pain
6 management center at Langone Medical here in New York. He
7 explained that there is a wide range of doses that oxycodone
8 comes in. It ranges from 2.5 milligrams on the low end to 30
9 milligrams on the high end for short-acting oxycodone.

10 Dr. Gharibo explained that 30 milligrams of oxycodone is so
11 strong that it's almost never appropriate except for a patient
12 dying from cancer in the last few months of their life.

13 Because of the strength of these pills, you now know that
14 short-acting oxycodone and 30-milligram oxycodone pills in
15 particular are the preferred pills of drug addicts and drug
16 traffickers.

17 Dr. Gharibo explained that 30-milligram oxycodone
18 pills provide a rapid and euphoric high that addicts and
19 abusers crave. When one 30-milligram pill doesn't suffice,
20 addicts turn to more pills. They look for different ways to
21 absorb the drug. They take it with alcohol. They crush it up
22 and snort it.

23 And you heard from Detective Del Rosario and DEA
24 Analyst Castro that 30-milligram oxycodone pills are the
25 highest dose oxycodone pill on the market that can be crushed

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Summation - Mr. Rodriguez

1 up and snorted.

2 There's no dispute that from July 2012 to June 2017,
3 David Taylor wrote over 14,000 prescriptions for 30-milligram
4 oxycodone pills. So about two-thirds of the oxycodone
5 prescriptions during these five years were for the highest
6 dosage of short-acting oxycodone available. That is over 2.6
7 million pills of 30-milligram oxycodone. There's no dispute
8 about any of this.

9 There is also no dispute that for years Taylor
10 prescribed a massive amount of 30-milligram oxycodone directly
11 to this man, Vito Gallicchio, a brash and shameless drug
12 dealer. From July 2012 to June 2017, Taylor wrote 63
13 prescriptions for 30-milligram oxycodone to Gallicchio, most
14 often, 240 or 270 pills at a time. That's over 10,000
15 30-milligram pills, the kind of pills for people dying from
16 cancer, over the course of five years just to Vito himself.

17 There is also no dispute that Vito had what you heard
18 described as an inner circle of people that he referred to
19 David Taylor -- people like his wife, Lori Gallicchio; his
20 brother, Robert Adams; his nephew, Don Michael Carim; his
21 nephew's roommate, John Marino; his driver, Michael Farley, who
22 you heard referred to as Mikey Limo; his driver's wife, Tara
23 Farley; and other people like Larry Montalbano and Brian
24 Dolinko, both of whom testified at this trial along with John
25 Marino.

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Summation - Mr. Rodriguez

1 There is no dispute that David Taylor prescribed every
2 one of the people in this crew huge amounts of 30-milligram
3 oxycodone. Now, there is also no dispute that David Taylor
4 knew that Vito Gallicchio was referring people from this crew
5 to him. Vito is explicitly referenced in his wife's patient
6 chart, his brother's chart, and in Tara Farley's chart. Vito's
7 address and phone number are listed in Leonard Danzi's file.
8 Vito went with Larry Montalbano for his first visit to David
9 Taylor. John Marino told you how he told David Taylor during
10 his first appointment that Vito had recommended him.

11 There is also no dispute that the people in Vito's
12 crew had absolutely no need for this oxycodone that David
13 Taylor was prescribing them and that for the most part the crew
14 was just funneling the oxycodone to Vito, which he then sold on
15 the street.

16 You heard from Larry Montalbano and John Marino that
17 they never took the oxycodone pills Taylor prescribed them.
18 Instead, they gave the prescriptions for the pills to Vito in
19 return for cash. Brian Dolinko told you that as part of the
20 arrangement he had to give some of his oxycodone pills to Vito.
21 Dolinko then took the rest of the pills, not because he was in
22 pain, not because he needed them, he told you that he took the
23 pills to get high.

24 There is also no dispute about how Vito and the
25 members of this crew filled the oxycodone prescriptions that

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Summation - Mr. Rodriguez

1 they received from David Taylor. You heard from Larry
2 Montalbano and John Marino about how certain pharmacies that
3 they went to, like Walgreens, CVS, refused to fill the
4 oxycodone prescriptions that David Taylor wrote.

5 You know from the data that pharmacies have to report
6 as part of the prescription monitoring program that Vito and
7 his crew often traveled far into New Jersey to fill their
8 prescriptions.

9 They also went to places where Vito had arrangements
10 to fill these prescriptions with pharmacists like Nicholas
11 Avicolli at Victory Pharmacy, and the pharmacist who you heard
12 referred to as Joe as Bergen Point Apothecary in Bayonne, New
13 Jersey.

14 There is also no dispute that David Taylor received
15 money and gifts from Vito and those in the crew. The three
16 phony patients from Vito's crew you heard testify in this
17 trial -- Larry Montalbano, Brian Dolinko, John Marino -- they
18 all told you how they paid cash for their visits to David
19 Taylor. The three of them, three people who don't know each
20 other, told you how Vito helped Taylor pay the rent on Taylor's
21 office. You heard from Montalbano how Vito once had to pay
22 Taylor \$5,000 in cash.

23 You saw the bottles of Scotch Taylor received, like
24 the ones you heard about him talking on the recordings, the
25 Glenlivet and Macallan. You even saw a bottle of Scotch right

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Summation - Mr. Rodriguez

1 there in David Taylor's exam room on the day he was arrested.

2 Now, you know also that Vito spend almost \$400 buying
3 a dryer for David Taylor, because you heard it from Brian
4 Dolinko and you saw it in the records from P.C. Richard. Right
5 there, the record from P.C. Richard: Sold to Vito Gallicchio,
6 ship to David Taylor, paid \$391.95.

7 Vito also bought Taylor a refrigerator. You heard
8 about that. You saw the record from P.C. Richard.

9 Finally, there is no real dispute that venue is proper
10 in this district. That simply means that some act in
11 furtherance of the conspiracy that Taylor was charged with
12 occurred in this district. This district includes, among other
13 places, Manhattan, the Bronx, certain counties to the north, as
14 well as the bridges and waterways that connect Staten Island to
15 the rest of New York and to New Jersey.

16 Now, at several times during this trial, you heard
17 reference to Vito and the members of his crew getting
18 prescriptions from Taylor in Staten Island and then crossing
19 bridges into New Jersey and filling them at various pharmacies
20 in New Jersey. So, for example, Larry Montalbano testified
21 that he traveled over bridges and waterways within this
22 district to fill his oxycodone prescriptions that he illegally
23 obtained.

24 So there's no real dispute it seems that this
25 conspiracy took place in places in this district. All of that

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Summation - Mr. Rodriguez

1 seems not to be in dispute in this case.

2 Which brings us to the only issue which really does
3 appear to be disputed: When David Taylor wrote prescription
4 after prescription of oxycodone for Vito and the members of his
5 crew, month after month, year after year, did David Taylor know
6 that these people did not need it?

7 When you look at the overwhelming evidence in this
8 case, it is crystal clear that Taylor absolutely did know that
9 he was prescribing medically unnecessary oxycodone to people
10 who did not need it.

11 So let's look at the evidence. Let's start with the
12 sheer number of 30-milligram oxycodone pills that Taylor
13 prescribed to Vito and the members of the Vito's crew.

14 David Taylor knew the power of these kinds of pills,
15 and he knew the types of patients that legitimate doctors used
16 them for. You remember Nicholas Avicolli telling you about
17 when he first noticed David Taylor prescribing more and more
18 drugs like oxycodone.

19 Avicolli confronted Taylor, and in a conversation
20 between two professionals, Taylor said he was doing hospice
21 care, the treatment of terminally ill patients focused on just
22 keeping them comfortable.

23 That's not what David Taylor was doing for any of the
24 people in Vito's crew. Oxycodone for five years is not hospice
25 care. For Vito Gallicchio, Taylor prescribed either 240 or 270

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Summation - Mr. Rodriguez

1 30-milligram oxycodone pills at a time for almost five years.
2 That's eight or nine pills of the strongest short-acting
3 oxycodone available every day.

4 You know from Dr. Gharibo that these are massive -- to
5 use his word, ridiculous quantities of oxycodone. This is not
6 something that two doctors can have a reasonable professional
7 disagreement about. These doses of oxycodone, to use
8 Dr. Gharibo's phrase, are not human doses. This is not the way
9 that human beings are treated for pain, especially not for
10 shoulder pain or back pain or carpal tunnel syndrome.

11 David Taylor prescribed Vito this much oxycodone
12 because he knew that Vito was not taking these pills. He was
13 selling them. And when you sell pills, the more the better.

14 The numbers tell the story here. You can convict
15 David Taylor based on what you know about oxycodone
16 30-milligram pills and the simply not human doses of oxycodone
17 he prescribed to Vito, and that's it. These numbers tell you
18 beyond a reasonable doubt that David Taylor knew he was
19 prescribing medically unnecessary oxycodone.

20 But, of course, it wasn't just Vito. Taylor was
21 doling out massive doses of 30-milligram oxycodone to everyone
22 in Vito's crew.

23 Let's take a look at just a couple more examples.

24 Michael Farley, Vito's driver, 240 30-milligram pills
25 for almost three years between 2013 and 2016.

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Summation - Mr. Rodriguez

1 Robert Adams, Vito's brother, 240 pills at a time
2 between 2012 and 2014. He jumps to 270 pills at a time in
3 March 2014 and he stays there until about 2016.

4 These numbers don't lie. David Taylor knew he was
5 prescribing huge amounts of oxycodone that could not possibly
6 be for the legitimate treatment of anything.

7 So what else proves that David Taylor knew what he was
8 doing?

9 Well, the fact that Taylor performed almost no
10 examination on his so-called patients whatsoever proves that he
11 knew they didn't need the oxycodone.

12 Dr. Gharibo told you about what a legitimate pain
13 management examination looks and sounds like. Legitimate pain
14 management doctors ask their patients lots of questions:
15 Where's the pain coming from? What direction does it go in?
16 What makes it better? What makes it worse? How does the pain
17 affect what you can or can't do in your life?

18 They ask their patients, legitimate doctors that is,
19 to move, bend, flex the parts of your body where you're telling
20 me you have pain. Legitimate doctors touch and examine the
21 parts of the body where their patients tell them they have
22 pain.

23 Now, Larry Montalbano, John Marino, Brian Dolinko,
24 they told you that David Taylor hardly did any of that during
25 any of their visits. John Marino even told you he told Taylor

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Summation - Mr. Rodriguez

1 his shoulder was fine.

2 You remember that recording that Brian Dolinko made.
3 The visit that lasted all of two minutes and 15 seconds, most
4 of it in complete silence.

5 What was said?

6 "David Taylor: OK, how's -- how's your shoulder,
7 range of motion?

8 "Brian Dolinko: OK.

9 "David Taylor: OK. So we got the -- the oxycodone
10 and the oxymorphone, right? OK. Go ahead and take a seat in
11 the waiting room."

12 This is supposed to be someone suffering from
13 excruciating pain, someone who requires a massive amount of
14 opioids, and that's the examination he gets.

15 Brian Dolinko left Taylor's office that day with what?
16 180 pills of the muscle relaxer Soma, that's six pills a day;
17 60 extended-release 12-hour 40-milligram oxymorphone pills,
18 another two pills a day; 180 30-milligram oxycodone pills, six
19 more pills a day.

20 To be given this cocktail of powerful drugs after
21 asking, "How's your shoulder range of motion?" and getting "OK"
22 with no further physical examination, no follow-up questions,
23 it's ridiculous. This is not a medical examination. This is
24 not the legitimate practice of medicine. This is a charade.

25 David Taylor did not perform a legitimate medical

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Summation - Mr. Rodriguez

1 examination on Brian Dolinko because he knew that any exam
2 would reveal that Brian Dolinko did not need it. That's how
3 Taylor operated, a brief song and dance before doling out
4 massive quantities of oxycodone.

5 You also saw it on the other recordings as well.

6 With Julio Clark, Taylor went on and on in the
7 recording about Scotch and the history of the Glenlivet after
8 Clark had brought him a bottle. No questions about whether
9 Clark was in pain, no physical examination, nothing.

10 But what did Julio Clark walk away from that visit
11 with? A prescription for 180 pills of 30-milligram oxycodone.

12 The next time Clark goes to see Taylor, he tells
13 Taylor that he's addicted to these pills. Then Taylor makes
14 some sort of flippant comment about how Clark should just go to
15 rehab.

16 Then what does he do? He gives Clark more pills: A
17 prescription for oxycodone, a prescription for oxymorphone, and
18 an appointment card for the next visit.

19 How about Christine Oakes. You remember what one of
20 her visits sounded like.

21 (Video played)

22 MR. RODRIGUEZ: You don't need a medical degree to
23 know what is wrong there. She was slurring her speech beyond
24 recognition.

25 No questions from Taylor about this. No physical

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Summation - Mr. Rodriguez

1 examination. Why not? Because Taylor doesn't care. He knew
2 what she was there for and he knew what he was going to give
3 her.

4 And what did she get? 240 30-milligram oxycodone
5 pills and 150 Percocets.

6 Why didn't Taylor perform meaningful examinations?
7 Because he knew that these patients didn't need them. He knew
8 that if he performed real examinations he wouldn't find
9 anything that required the medications he was prescribing. He
10 knew that these patients did not need oxycodone.

11 Now, if you had any doubt about that, just remember
12 Vito's nephew, Don Michael Carim. At 30 years old, Carim began
13 seeing David Taylor and receiving oxycodone 30-milligram
14 prescriptions. By May 2016, he's getting 240 pills at a time.

15 Then what happens in March of 2017?

16 Right in the middle of a string of prescriptions for
17 180 oxycodone 30-milligram pills, David Taylor clears Don
18 Michael Carim to participate in the FDNY fitness awareness
19 program.

20 What does that program involve?

21 Let's look at the paperwork that was in Taylor's file
22 and that Taylor signed. Here it is. "This program involves
23 strenuous physical activity, which will be progressive in
24 nature."

25 You can see at the bottom of the page there that that

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Summation - Mr. Rodriguez

1 includes performing the maximum number of uninterrupted pushups
2 and pullups the candidate can perform.

3 But what else does this document show?

4 Let's look at this paragraph right here.

5 It describes the type of people who are not fit to
6 participate in this program because of the serious health risks
7 involved. It includes, right here, people who take opiates,
8 people who take pain medications.

9 The next page continues to describe what this physical
10 fitness program will entail. The maximum number of situps the
11 candidate can perform, a timed one and a half mile run, a
12 40-minute physical training session similar to that which is
13 administered during probationary firefighter school.

14 David Taylor certifies that he examined Don Carim and
15 that he is medically fit to participate in this program.

16 Taylor is prescribing Carim almost 200 pills a month
17 of the kind of oxycodone reserved for dying cancer patients and
18 he certifies that he's fit to participate in this strenuous
19 physical fitness program?

20 This document is devastating proof that David Taylor
21 knew that Don Carim was not in pain, that he did not need
22 oxycodone, and that he was not taking oxycodone. You can
23 convict David Taylor based on this document and the oxycodone
24 he was prescribing to Don Michael Carim.

25 How else do you know that Taylor knew these were not

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Summation - Mr. Rodriguez

1 medically necessary prescriptions?

2 Literally everyone in the crew got the same
3 prescription for oxycodone.

4 You saw in the recordings and you also know from the
5 patients who testified at this trial that Taylor never explored
6 or even discussed less potent alternatives to 30-milligrams
7 oxycodone. He always prescribed that pill.

8 He prescribed it to people like Larry Montalbano, John
9 Marino, Brian Dolinko, right away. No questions asked. In
10 fact, Brian Dolinko told you how he got a prescription of 30
11 milligrams of oxycodone from David Taylor with no discussion at
12 all about it. He didn't ask for it. They didn't talk about it
13 because they didn't need to. Everyone knew that if you wanted
14 oxy, Taylor was your guy.

15 You heard from Dr. Gharibo that the norm for a
16 legitimate pain management practice is to have a low percentage
17 of patients on opioids. But astoundingly, against all odds,
18 everyone in Vito's crew not only got opioids, but 30 milligrams
19 of oxycodone, the most diverted form of oxycodone, a pill that
20 addicts like Brian Dolinko buy on the street for \$20 to \$25 for
21 each pill, the strongest oxycodone that can be crushed and
22 snorted by addicts.

23 Vito and his wife, Lori, were both prescribed this
24 pill. Vito's driver, Michael Farley, and his wife, Tara, were
25 both prescribed this pill. Vito's nephew Don Michael Carim and

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Summation - Mr. Rodriguez

1 his roommate John Marino were both prescribed this pill.

2 Detective Del Rosario explained how Christine Oakes
3 and both of her parents were prescribed this pill by David
4 Taylor.

5 It was not a coincidence that all these connected
6 people required the same medication. That's just one small
7 piece of legitimate pain management practice, and David Taylor
8 knew it.

9 You know from the witnesses and other evidence that
10 Taylor never discussed physical therapy, changes to the
11 patient's lifestyles, referrals to other doctors or
12 specialists, surgeries, pain injections, medications that are
13 not controlled substances, medications that are not opioids,
14 medications that are not oxycodone, lower doses of oxycodone
15 than 30 milligrams, anything else in the wide range of
16 legitimate pain management that you heard about from
17 Dr. Gharibo short of 30 milligrams of oxycodone.

18 Let me talk just for another minute about Vito and his
19 wife. Both received massive quantities of oxycodone from
20 Taylor. Your common sense tells you how suspicious it is for a
21 wife and a husband to be receiving the same prescription for
22 the same potentially lethal painkiller.

23 Lisa Mercado, someone with no medical training, was
24 shocked when she learned that a patient as well as that
25 patient's mother and father were all being prescribed the same

Ic4ntayl

Summation - Mr. Rodriguez

1 medication from David Taylor. Vito and Lori, husband and wife,
2 both in their 40s, both receiving enormous quantities of the
3 most abused type of oxycodone from David Taylor, the type of
4 oxycodone reserved for people dying of cancer in their last
5 months of life.

6 That would be suspicious enough on its own, but of
7 course there was more. Vito's brother, his nephew, all of them
8 in such debilitating pain that they had to take hundreds of
9 oxycodone pills each month for years. These were young
10 patients. Mostly all of them were under 50; some of them were
11 in their early 30s.

12 They weren't in pain and Taylor knew it. That's why
13 he didn't consider any other option that a legitimate pain
14 management doctor would consider. Because when it came to Vito
15 and his crew, Taylor was not a legitimate pain management
16 doctor. He was a drug supplier.

17 Taylor knew that these patients were addicts and drug
18 dealers, not people in real pain seeking real treatment. That
19 much was obvious from the people in the waiting room in his
20 office that you heard about. Larry Montalbano told that you
21 there were people in there who were nodding off, high on drugs.
22 As Brian Dolinko put it, people were strung out, possibly
23 withdrawing.

24 How did it work?

25 You paid your money, you sat down with the doctor, and

Ic4ntayl

Summation - Mr. Rodriguez

1 he wrote you a prescription for oxycodone. You didn't have to
2 tell him why you were there. He knew.

3 Lisa Mercado told you that the waiting room was always
4 chaotic, that there were fights breaking out among the people
5 there.

6 Larry Montalbano told you that the waiting room was so
7 out of control one day that Taylor stormed in and he yelled:
8 If everybody doesn't shut up and sit down, no one is getting
9 anything.

10 David Taylor knew that everyone in that waiting room
11 was there for one thing, oxycodone, and he knew they weren't in
12 real pain. But if they were, if they were in such excruciating
13 pain, pain associated with end-stage cancer, what legitimate
14 doctor would threaten to withhold treatment?

15 No real doctor would do that. But Taylor wasn't
16 acting as a real doctor, trying to treat real patients. He was
17 dealing drugs.

18 Now, it wasn't only obvious from the waiting room. It
19 was obvious from the inside of his exam room as well. You
20 remember Christine Oakes slurring her words. It was obvious
21 from the phone calls that came in and that were recorded to
22 Taylor.

23 Like the call Lisa Mercado got that she told David
24 Taylor about, where the mother of a patient in detox called the
25 office and demanded that Taylor no longer see her daughter.

Ic4ntayl

Summation - Mr. Rodriguez

1 It's clear that Taylor knew he was treating addicts
2 based on the records you saw relating to James Impellizine. In
3 August 2012, Taylor wrote a letter stating that he was treating
4 Impellizine for opioid dependency and self-reported abuse of
5 prescription opioids. Less than two years later Taylor is
6 prescribing Impellizine OxyContin, Roxicodone, Xanax and Soma.
7 Taylor wasn't treating James Impellizine for anything. He was
8 fueling his addiction.

9 How else is Taylor's knowledge of what he was doing
10 apparent? The advanced diagnostics that you heard about, like
11 MRIs, CT scans that were in Taylor's charts make clear that his
12 patients did not have the kind of injuries that require
13 oxycodone.

14 Look at Vito Gallicchio. The only test results in his
15 file were a 2012 CT scan of his head, which revealed normal CT
16 of the brain without contrast. Vito continued getting
17 oxycodone from Taylor for another five years after that normal
18 scan.

19 Lori Gallicchio, no record of any advanced diagnostic
20 tests in her file at all.

21 Robert Adams, Vito's brother, three MRIs from 2003,
22 almost a decade before he began seeing David Taylor.

23 You know from John Marino that his medical scans
24 detected no major injuries.

25 And Brian Dolinko told you that he only had MRIs from

Ic4ntayl

Summation - Mr. Rodriguez

1 a car accident that happened years before he ever saw Taylor.

2 And what did these patients complain about?

3 Vito complained of postoperative pain from a 2007
4 surgery on his knee, general back pain, anxiety, headaches.

5 Lori Gallicchio, carpal tunnel syndrome.

6 Larry Montalbano said he had heel spurs.

7 John Marino complained of pain when he was playing
8 sports.

9 These are not the kind of injuries that require an
10 opioid as powerful as 30 milligrams of oxycodone. In fact, as
11 Dr. Gharibo told you, oxycodone 30 milligrams would make some
12 of these conditions like headaches and anxiety even worse. And
13 David Taylor knew that.

14 You heard a lot about urinalysis testing, especially
15 from Mr. Carnesi during this trial. So let's put aside the
16 fact that Vito was tested once in ten years. Let's put aside
17 that his wife, Lori, was tested twice in eight years. Let's
18 focus instead on the test results that David Taylor actually
19 kept in his patient files and that he oftentimes signed. Now
20 for some patients, the drug tests were negative for oxycodone,
21 meaning that the oxycodone they were prescribed was not
22 detected in their urine. In other words, they were not taking
23 the oxycodone Taylor prescribed. Taylor knew that.

24 For others, the results showed oxycodone, but not
25 noroxycodone. Dr. Gharibo explained that noroxycodone is

Ic4ntayl

Summation - Mr. Rodriguez

1 what's called a metabolite of oxycodone. It's a chemical that
2 a person's body produces when they ingest oxycodone and that
3 should show up in their urine test if someone is actually
4 taking the pills.

5 So how could a person test positive for oxycodone, and
6 then negative for noroxycodone? You know how. As John Marino
7 explained, Vito taught the people in his crew to crush up an
8 oxycodone pill and put it in their samples if they were ever
9 tested.

10 Now, as you heard from Dr. Gharibo, doctors are taught
11 in medical school about metabolites and what should be in the
12 results of a drug screening test for someone taking oxycodone.
13 Taylor saw these results. He knew that these people were not
14 taking oxycodone.

15 Let's look at an example. Lori Gallicchio did exactly
16 what her husband advised by crushing up an oxycodone pill and
17 dropping it in her sample. In June 2010, she took a drug test.
18 David Taylor gets this report. It's in his file. What
19 happens?

20 She tests positive for oxycodone, but negative for the
21 metabolite noroxycodone. A report that is in his chart with
22 his signature right there. He knew that Lori Gallicchio had
23 tampered with her urine, and he didn't care. He didn't care,
24 and he continued prescribing 30 milligrams of oxycodone for
25 years.

Ic4ntayl

Summation - Mr. Rodriguez

1 Other people in Vito's crew tested positive for
2 medications that Taylor wasn't prescribing or for illicit drugs
3 like cocaine. These were all test results that were in David
4 Taylor's files, results that he reviewed and that he knew
5 about, results that showed that these people did not need
6 oxycodone.

7 It was all part of the charade. David Taylor didn't
8 care about the results of the urine tests, but he did them for
9 the same reason he insisted on having MRIs and x-rays in his
10 file even if they were inconclusive. He did it to create and
11 paper a file. He did it for a day like today.

12 So, if someone came asking, he could point to his
13 file. It's what Taylor and Nicholas Avicolli discussed.
14 Nicholas Avicolli told you that he wanted to make sure Taylor
15 was doing these kinds of things so that he was covering their
16 butts.

17 Taylor, of course, couldn't just hand out oxycodone
18 prescriptions, so he insisted on MRIs sometimes. He took some
19 notes to make it look like he was taking notes and doing a real
20 exam.

21 Larry Montalbano noticed that Taylor would often just
22 copy his notes month after month. As Dr. Gharibo put it, his
23 notes looked like they were a kind of rubber stamp. Just look
24 at these two pages from the chart of Don Michael Carim. It's
25 the same four lines repeated over and over for six visits in a

Ic4ntayl

Summation - Mr. Rodriguez

1 row: "Pain well controlled. Rotation, 60 degrees, flexion 80
2 percent, cervical disk disease, continued RX, signed David
3 Taylor.

4 You saw how Taylor papered his chart the same day
5 during the recording of that nonexistent examination of Brian
6 Dolinko making references to the pain being well controlled,
7 cervical, and lumbar disk disease. You saw the video and you
8 know that these notes bear no resemblance to what actually
9 happened.

10 Taylor wrote in John Marino's chart that he was
11 walking with a slight limp. Marino told you that he wasn't
12 walking with a limp, and he wasn't faking one either. This is
13 just David Taylor covering his tracks to make it look like he
14 was practicing real medicine, and the fact that he felt he
15 needed to do that tells you all you need to know about his
16 knowledge. He knew that there was no medical need for these
17 prescriptions because he tried to make it look like there was.

18 Now, David Taylor knew that the huge amounts of
19 medically unnecessary oxycodone he was prescribing, it was a
20 problem. He was concerned that these sky high numbers would
21 stick out to pharmacies, insurance companies, and the DEA, so
22 he tried to hide it.

23 You know from Lisa Mercado that pharmacies called and
24 wrote letters all the time questioning Taylor prescriptions or
25 sometimes just refusing to fill them altogether. And you heard

Ic4ntayl

Summation - Mr. Rodriguez

1 on one of the recordings with Christine Oakes that Taylor
2 didn't want to take on too many new patients, in his words,
3 "'cause then the pharmacies get nervous." Of course, what he
4 means is new patients mean more and more oxycodone, leading to
5 more and more questions by pharmacies.

6 So Taylor tried to bury these oxycodone prescriptions
7 by prescribing other medically unnecessary drugs. For example,
8 Taylor wrote John Marino Fentanyl, which Marino didn't ask for
9 and which Taylor didn't tell Marino how to use.

10 Why? What did he say to John Marino? Because
11 pharmacies or insurance companies like to see an alternative to
12 the oxycodone scripts.

13 In addition to oxycodone, Taylor also wrote Brian
14 Dolinko prescriptions for Soma and oxymorphone that Dolinko had
15 no idea he was getting. That's what Taylor did. He prescribed
16 drugs that patients didn't ask for, drugs that Taylor didn't
17 explain why he was prescribing.

18 He wrote Larry Montalbano prescriptions for MS Contin,
19 a 24-hour slow release opioid. Taylor told Montalbano that he
20 didn't care if Montalbano didn't take them. Montalbano just
21 had to fill them. Taylor prescribed these additional drugs to
22 make it look like he was doing something other than prescribing
23 oxycodone to people who didn't need it.

24 He was trying to make his practice look more like a
25 legitimate one, one where a doctor prescribes different drugs

Ic4ntayl

Summation - Mr. Rodriguez

1 to different people. He was trying to hide what he was doing.

2 Nicholas Avicolli told you that there came a time when
3 Taylor reduced the number of oxycodone pills he was prescribing
4 to try and avoid detection by the DEA. You saw that play out
5 in the numbers.

6 In the fall of 2016, Taylor dropped people in Vito's
7 crew down to 180 pills.

8 Let's look.

9 Don Carim, fall of 2016 dropped to 180 pills.

10 Michael Farley, dropped to 180 pills.

11 Vito Gallicchio himself, dropped to 180 pills.

12 Robert Adams, Vito's brother, dropped to 180 pills.

13 Leonard Danzi, dropped to 180 pills.

14 Brian Dolinko, dropped to 180 pills.

15 Taylor dropped all these patients not because he had
16 examined them and that they were all now in less pain, he did
17 it because he was worried about drawing too much attention from
18 the DEA. This was all part of a concerted effort by Taylor to
19 try and disguise the massive amounts of medically unnecessary
20 oxycodone he was prescribing to avoid detection.

21 Taylor did what he had to do to protect what mattered
22 most to him, the easy money, visits that lasted only a few
23 minutes, and required no more than the stroke of a pen and that
24 could rake in thousands of dollars each day, the rent money
25 from Vito, the \$5,000 in cash from Vito, the gifts big and

Ic4ntayl

Summation - Mr. Rodriguez

1 small. You saw David Taylor receive bottles of Scotch and then
2 talk about them on the recordings.

3 Did he look surprised? Did he say thank you? No.

4 It was expected. It was part of the deal.

5 It was a criminal agreement, cash and gifts for
6 oxycodone, massive amounts of oxycodone, not human amounts of
7 oxycodone, an agreement, one that Nicholas Aviccolli told you
8 did not require anything more between two professionals than a
9 wink and a nod, an agreement that when David Taylor was kicked
10 out of one of the offices that Lisa Mercado told you about,
11 required him to stand shoulder to shoulder with his longtime
12 partner in the drug trafficking business, Vito Gallicchio to
13 demand his money.

14 It's time to hold David Taylor accountable for the
15 crime he committed.

16 Return the only verdict consistent with the evidence,
17 the law, and common sense.

18 David Taylor is guilty.

19 THE COURT: OK. Defense counsel?

20 (Continued on next page)

21
22
23
24
25

IC46TAY2

Summation - Mr. Carnesi

1 MR. CARNESI: Yes. Thank you, your Honor.

2 May I?

3 THE COURT: Yes.

4 MR. CARNESI: Good morning, ladies and gentlemen. A
5 week ago I stood before you upset with the idea that in this
6 court of law we had finger-pointing and a lot of name-calling
7 and a week later we're still at the same spot. There can point
8 fingers and they can call names, but eventually it is up to you
9 to evaluate the evidence. When I speak to you about the
10 evidence, what I submit to you is evidence is the testimony,
11 the exhibits, the things that were introduced that will help
12 you answer what we both agree is the fundamental question.
13 This indictment has one count and it has one question, one
14 allegation: Did David Taylor enter into a criminal conspiracy,
15 an agreement with other individuals, to dispense what he
16 knew -- he knew -- was in fact unnecessary prescriptions?

17 Well, the first thing that I would suggest to you is
18 obviously the agreement. I don't think anybody has to tell you
19 what an agreement requires. It is an understanding on both
20 sides, not just one. You can't say, Well, I had a sense of
21 things, a wink and a nod. That doesn't get you by. Not in
22 this court and not with these consequences. It is an agreement
23 between at least two parties to advance to do a particular
24 criminal act.

25 In an attempt to prove that agreement, what the

IC46TAY2

Summation - Mr. Carnesi

1 government did is they produced Larry Montabano, Brian Dolinko,
2 and John Marino. Let's start with those three. Those are
3 three people who each came before you and testified. They
4 each, whether they knew each other or not, had one very what I
5 submit to you is an extremely important piece of information on
6 this issue of whether there was an agreement between Dr. Taylor
7 and anyone else one consistent story. They each came to this
8 court with one form or another of an agreement that they had
9 reached with the prosecution to try and take measures to get
10 out from under their own criminal conduct -- their own criminal
11 conduct -- and the consequences of that conduct by helping the
12 government in an investigation or a prosecution of some other
13 individual.

14 So they came here to testify concerning Dr. Taylor to
15 help the government. And ultimately what is it that they
16 actually could say? We all knew Vito Gallicchio. We were all
17 approached by Vito Gallicchio. We were all told by Vito
18 Gallicchio that if we had some form of an injury or some
19 medical documentation of an injury, we can make money by going
20 to see Dr. Taylor and convincing him to write a prescription
21 and selling it back to Vito Gallicchio. So we know they had an
22 agreement with Vito Gallicchio.

23 But what happens when they go to see Dr. Taylor?
24 Again, one consistent thing. Vito Gallicchio prepares them to
25 lie. You got to go to Dr. Taylor and you got to tell him you

IC46TAY2

Summation - Mr. Carnesi

1 are hurt and you are in pain. They came into the courtroom
2 today or last week and said, Nah, I wasn't really in pain. No,
3 my injury was really old. But it is not what they told him.
4 What they told him is what they needed to say in order to
5 advance their agreement with Gallicchio. Keep the old man in
6 the dark. See if you can get over on the fool. But you want
7 to make money with Vito? That is what it is going to depend
8 on. And they all did it. Every one of them told you, Oh, no,
9 when I went in to see the doctor, I told him, I am in pain.

10 Now, we can go back and forth about the medical
11 procedure, the therapy, this and that; but one thing I may
12 agree with with Dr. Gharibo is very simple: A patient comes in
13 and says, I have a fever; you get a thermometer and take their
14 temperature and you can confirm that. They come in and say, I
15 broke my arm; you get an X ray and you can confirm that. High
16 blood pressure? There is a machine to confirm that.

17 I am in excruciating pain. I can't function. I can't
18 do my job. You can't confirm that. For good or bad to a
19 certain extent, you're at the mercy of the patient of the
20 person giving you the information. You can be suspect. You
21 can try to probe at it, but ultimately pain is what the patient
22 says he is experiencing. And the function in pain management
23 is to reduce the pain, but also to allow the individual to be
24 put back in a position where they can function on a daily
25 basis. If that requires medication, then that is the

IC46TAY2

Summation - Mr. Carnesi

1 obligation -- to treat them with the medication.

2 As far as whether all of this was understood from the
3 beginning, well, let's go back to Mr. Marino for a second.
4 Mr. Rodriguez mentioned to you, you know, Mr. Marino told him,
5 Tell Dr. Taylor or mention to somebody that he was recommended
6 by Vito Gallicchio. But he went in there with a whole disc of
7 his medical problems supporting his medical problems. He went
8 in there and, I am an athlete and I am this; but when he was
9 talking to the doctor, ultimately he had to say the opposite.
10 Of course I told the doctor I was in pain. I was there to get
11 medication. My plan, of which the doctor was not a part of the
12 conversation I was having with Vito, was to sell the medication
13 to Vito; but that is what I had to do to get the medication.

14 The first visit, Vito's name or not, he doesn't get
15 any medication. First visit he gets a drug test. What do you
16 know about drug tests? Mr. Rodriguez just showed you. See,
17 there is a drug test. If you read it this way, you see it is
18 positive for Oxycodone and it shows negative for a number
19 things including this product that breaks down the Oxycodone in
20 your body.

21 It just occurs to me that the purpose of the drug
22 tests, which the drug its obviously understand, is to make that
23 determination is the patient taking it or not taking it. Look
24 at those things. Is there an asterisks next to that finding
25 with regard to that metabolic? Is it underlined in red? Is it

IC46TAY2

Summation - Mr. Carnesi

1 flashing red lights saying, Whoa, wait a second. We're
2 confirming there is Oxycodone in here, but it didn't go through
3 his system according to this test. No, it just says along with
4 other chemicals it is not present in there.

5 In Marino's situation it wouldn't have been. Marino
6 goes back to the doctor. He is then in a position where he
7 receives prescriptions. He out of the presence of the doctor
8 in a separate deal with Vito Gallicchio sells his pills to Vito
9 Gallicchio. But he was urine tested. And what you do know
10 about urine tests? Dr. Gharibo said you are not even
11 required -- you are not required -- to give urine tests. So
12 again when you come to this fundamental issue that you have to
13 decide, and only you have the ability to decide this issue, of
14 did you enter into an agreement and did he understand what Vito
15 Gallicchio was doing, when you ask yourselves that and ask why
16 would he then be taking this unnecessary step of requiring
17 urinalysis?

18 Why would Vito Gallicchio not only have to do
19 counseling of these individuals outside the presence and
20 hearing of Dr. Taylor? Hey, listen you may end up with a urine
21 test, but here is how you beat the test. I think he told
22 Marino, Take the pill before the test. Marino, he didn't want
23 to take one pill. He said, I wasn't going to do that. So he
24 tells everybody else, Just grind up the pills and put it in
25 your urine. Why? Why if everybody is in and that is the

IC46TAY2

Summation - Mr. Carnesi

1 conspiracy? Everybody understands what is going on. He is a
2 willing participant. Why do we have to get over on him? Why
3 are we fooling him?

4 Why is Denise Suarez if every patient in there
5 understands this is Dr. Taylor and he is just going to write
6 Oxycodone and he is a part of this criminal agreement, why are
7 patients paying Denise Suarez not to submit their urine for
8 analysis? Why are they telling her, No, we don't want to get
9 tested because we don't want to get thrown out of the practice.
10 If everybody is part of this conspiracy, why do you have to pay
11 her? He is in on it. He is not throwing anybody out. Why?

12 Eventually John Marino gets tested. His urine turns
13 up clean. He gets thrown out. He may have introduced himself
14 as Vito's friend. He may have had something going on with Vito
15 outside the presence of Dr. Taylor. The test comes up clean;
16 he is out. Don't let anybody fill you with nonsense about oh,
17 well, wait a second there was this guy in the waiting room and
18 I think he went back and he told Vito and then Vito must have
19 told the doctor to throw me out. No, there is no evidence of
20 that. And the one thing you are here to do is to decide this
21 case on evidence. So let's not let anybody fill in
22 conversations that there were absolutely no proof of. Let's
23 not presume that some individual had a conversation with Vito.
24 There is no proof of that. Let's not resume that Vito had a
25 conversation with the doctor. There is no proof of that.

IC46TAY2

Summation - Mr. Carnesi

1 Let's just confine ourselves to the evidence.

2 You had Lisa Ricardo. She told you initially she was
3 doing the billing for Dr. Taylor. Then she told you that
4 initially at least when she was doing Dr. Taylor's billing, a
5 good portion of that billing was home visits and hospice
6 patients. That's the background, the treatment of hospice
7 patients, home confined patients that Dr. Taylor brings to his
8 practice.

9 It is probably philosophically a great deal different
10 than Dr. Gharibo brings to his. Dr. Gharibo has a certain
11 approach. He spoke in the course of his expert testimony about
12 guidelines and his guidelines in dealing with certain
13 situations. His experience and his background is different
14 than Dr. Taylor's. His practice, although it's what he refers
15 to as a pain management practice and he seems to be imminently
16 qualified of what he does, but his practical experience is
17 five -- less than 5 percent of his patients involve use of
18 opioid treatment. Less than 5 percent. Think of your own
19 experience and think of, I don't know, almost anything else in
20 life where you can say, Well, I've had 5 percent experience in
21 my life with these things.

22 I am a criminal defense lawyer for 40 years, but 35
23 years ago I did three divorces. Would you come to me as an
24 expert divorce lawyer? I doubt it. Is there any area in life
25 where someone says based on 5 percent practical experience, I

IC46TAY2

Summation - Mr. Carnesi

1 am an expert in that area? I doubt it.

2 With regard to, again, hospice care. Dr. Gharibo
3 referred to it. Mr. Rodriguez referred to it. It is a big
4 difference. It is not what we're talking about at this point
5 in this case, but it is part of the experience that goes into
6 how an individual, a doctor, practices, what the nature of his
7 practice is.

8 Ms. Mercado also told you a little bit about Dr.
9 Taylor. Mr. Rodriguez referred to it as a dispute that they
10 had over withholding his checks because there was an open bill
11 regarding services or whatever. He got upset and you saw how
12 upset she got because apparently she had had a pretty good
13 relationship with him. She told you it seemed so out of
14 character. He was a nice elderly man and it seemed like he was
15 being manipulated. Well, we resolved the dispute and a couple
16 minutes later he got his checks and a few minutes after that
17 consistent with I think the impression that I got from her as
18 to her relationship with the doctor is he called and
19 apologized.

20 One of the other individuals we heard about rather
21 directly from is Julio Clark. Now, Julio Clark again was
22 another one of these individuals who was misusing his
23 prescriptions, selling his prescriptions. He told you that at
24 some point that there was someone in Dr. Taylor's office who
25 was actually duplicating prescriptions. In other words, he

IC46TAY2

Summation - Mr. Carnesi

1 would pick up a prescription for Dr. Taylor and when he went
2 out to the front desk, somebody at the front desk had put in an
3 additional prescription so he was walking out with two
4 prescriptions at a time. I think this is some indication or
5 should be considered as some indication that Dr. Taylor may not
6 have been on top of everything that was going on in his office.

7 There were a lot of people as I mentioned to you in my
8 opening statement who betrayed Dr. Taylor and who took
9 advantage of him, people who he thought were friends of his.
10 People like Gallicchio that offered to run around and do
11 errands and help him paint and pick up his mail. Gallicchio is
12 a cigar guy. He would bring him cigars. His brother had a
13 butcher shop. I will bring you some special stakes from my
14 brother.

15 The question is whether or not you believe that the
16 doctor was taking stakes from Vito Gallicchio because he
17 understood that he had this agreement, this criminal conspiracy
18 with him, or was Vito Gallicchio just cozying up to the doctor
19 to softening him up to see what he could slip by him? When you
20 consider that, consider that Mr. Rodriguez is talking about
21 money that was paid for office visits. Allegations. There
22 were allegations of \$5,000 cash. How do you know there was
23 \$5,000 cash? Well, Vito Gallicchio. Vito Gallicchio didn't
24 come in here and testify. As to all the witnesses who did,
25 where is the opportunity to cross-examine these witnesses.

IC46TAY2

Summation - Mr. Carnesi

1 Twenty minutes ago Mr. Rodriguez showed us Vito
2 Gallicchio's picture up here and he talked about what a
3 despicable, miserable excuse for a human life Vito Gallicchio
4 is. Yet at the same time because Vito Gallicchio for his own
5 purposes may have told the story, Oh, yeah, I do this for the
6 doctor and I do that and I had to give him \$5,000 or a paid his
7 rent, for which there is absolutely no proof, never repeated
8 under oath, never tested by cross-examination; but because it
9 fits their narrative, suddenly it is the gospel according to
10 Vito Gallicchio. Vito said it should be true. Vito if the
11 evidence has shown anything is a drug-dealing, manipulative,
12 miserable human being who had no problem in taking advantage of
13 anyone that he could.

14 He went into a real conspiracy with Nicholas Avicolli.
15 No doubt about that. They clearly agree that he was going to
16 buy drugs directly off the truck essentially before they even
17 really got into the pharmacy from Avicolli so he could sell
18 them back on the street, and then he was robbing Avicolli as
19 well. But because Vito said this to somebody, suddenly, oh,
20 there's something we can rely on. It makes no sense.

21 Going back to Clark. Clark is one of those guys they
22 sent him in with a bottle of scotch. What is the story with
23 the bottle of scotch? Doc, here is a bottle of scotch which is
24 going to influence how you treat me and what you are going to
25 do for me. No, he says, Doc, I was down at the Army base and I

IC46TAY2

Summation - Mr. Carnesi

1 know you like this, this scotch, and they had got a good price.
2 They have things so much cheaper so I got you a bottle of
3 scotch. Oh, by the way, I am going through these pills too
4 quickly, can I get more pills? Can you write me a bigger
5 prescription for these pills. No. No. And if you are having
6 a problem with the pills, you should consider entering into a
7 rehab. Consistent with this conspiratorial agreement? Hardly.
8 Consistent with the idea that my acceptance of your bottle of
9 scotch requires me to write additional quantities of this
10 Oxycodone to you? Apparently not.

11 Then you have Mr. Avicolli. Mr. Avicolli I submit to
12 you is a case study of an individual who just refuses to accept
13 responsibility for his own conduct. What do I mean by that?
14 Well, he was very, very emotional on the stand. He seemed to
15 be very upset with his situation. But how does he get into
16 that situation? First of all, he wants to say I had other
17 problems. I thought I had a great marriage, but apparently I
18 had marital problem. I don't know what the marital problems
19 are and I don't care.

20 And then he had these financial problems. Think about
21 the individual who we're talking about. He has financial
22 problems. He owns a pharmacy and he owns a catering business
23 at that point. And he says, Well, those divorce lawyers cost
24 me a lot of money. Maybe the pharmacy business isn't going too
25 well, but he has two businesses. He didn't close either one of

IC46TAY2

Summation - Mr. Carnesi

1 the businesses at the time. He didn't sell either one of the
2 businesses. He keeps two businesses.

3 He borrows money. He doesn't go to Bank of America or
4 wherever to borrow this money. He goes to a loan shark.
5 Initially he borrows I think the figure was around
6 220-some-odd-thousand dollars from a loan shark. He has to
7 make weekly payments. They are high. They are not even
8 reducing the debt. That is crushing, a crushing burden on him.
9 But he got out of that. How? Because his family bailed him
10 out. His mother and father took out a reverse mortgage he said
11 and he had a friend. This Nick Pope. They got him out from
12 under this crushing burden and paid off his loan shark. He
13 still has his two businesses.

14 Then what did he do? What did he do after his family
15 stepped up and bailed him out of that situation? He went back
16 to the loan shark and he borrowed another half a million
17 dollars from the loan shark. Now he has a bigger, bigger
18 problem; but he still has the two businesses. He hadn't sold
19 them. These businesses you wants to tell you weren't
20 doing that well.

21 Vito Gallicchio approaches him and makes this overture
22 and says, We can make some money if you divert some of your
23 medications to me. We can make some real money. Huh-uh, he is
24 not sure he wants to do that. It took him about a week or two.
25 He thought it over and he reaches out to Vito, Yeah, we can do

IC46TAY2

Summation - Mr. Carnesi

1 business, and he does business with Vito. Big, big business.
2 Criminal-conspiracy type business, an agreement between him and
3 Vito. Not a wink and a nod. Not unstated. Very clearly
4 stated. \$10 a pill. Every bottle of 100 pills yields him
5 \$1,000.

6 This goes on for about somewhat less than two years.
7 In two years Nick Avicolli pockets just from his transactions
8 directly with Vito from the UPS truck to the pharmacy door to
9 Vito's car a million dollars. \$1 million. Not stakes. He
10 didn't do it for stakes. He didn't do it for scotch. He
11 didn't do it for a refrigerator or whatever the story was with
12 the appliances. You only know how far the story went. You
13 know Vito went and purchased and had them shipped there. You
14 don't know what happened after that. You don't know if he got
15 reimbursed. You don't know whose money he used to buy them in
16 the first place.

17 In any event, Avicolli got a million dollars. Vito
18 Gallicchio, who lives in this very nice house with this
19 backyard that is worth more than the house itself, who drives a
20 various points in time Bentleys and Corvettes and some high-end
21 cars for five at a time. If he is paying Avicolli a million,
22 he is telling them at a profit. Assuming he is doubling his
23 money, he is making at least a million on that.

24 You know one of the ways that they catch drug dealers?
25 You get a guy and he says, I work at pizzeria and I make

IC46TAY2

Summation - Mr. Carnesi

1 \$50,000 a year. Yeah, but you check and you find out he spends
2 half a million dollars of a year. He has this source of income
3 nobody is aware of. They told you they went to the doctor's
4 house and they turned every upside down. They examined his
5 financial records. They didn't find 10 cents that he made.
6 This is an agreement, a criminal conspiracy, an agreement
7 between the parties and somehow or another his part of the
8 agreement was, You guys take the money and I will take the
9 stakes and the scotch. That's what they want you to believe.
10 Maybe he wasn't on top of his game. Not that he was trusting
11 and not that he is too tired, but that is his part of the
12 agreement -- you guys get the money. I will just take the
13 scotch and the stakes.

14 Avicolli is pretty much in the same situation as we
15 talked about with the others. What is the deal? He is in a
16 lot of trouble. He is a prototype of never accepting
17 responsibility for what he did. He got up there and cried to
18 you. He didn't cry to you because he made a million dollars
19 and put in his pocket. He cried to you because he got caught
20 at it and now he is looking at -- what did he say? -- 20 years.

21 Now he wants to make a deal. She he makes a deal.
22 His deal says, You have to tell the truth. But that truth --
23 that truth -- has to help us. It has to help us to prosecute
24 or investigate another individual. There is only one guy
25 sitting here. So now you get this kind of testimony. Well,

IC46TAY2

Summation - Mr. Carnesi

1 yeah, I mean Vito never told me that the doctor knew what we
2 were doing. And I had conversations with the doctor, but I was
3 careful not to tell him what we were doing. But, you know, it
4 wasn't stated. It wasn't stated. It was kind of understood.

5 This is the evidence. This is the evidence for which
6 they are asking you to allow them to point a finger at that man
7 and say you are a drug dealer. Not because you agreed with
8 Vito Gallicchio or you agreed with Nick Avicolli but because
9 Nick Avicolli has these powers of telepathy from which he
10 discerned, yeah, you know, he understood. He understood what
11 it was about. I never gave him 10 cents. I never talked about
12 all the money I was making with Vito. I never asked him what
13 he was doing with his money or if Vito was paying him the right
14 amount of money from his share. We never talked about
15 anything; but nevertheless we had an agreement, an agreement
16 sufficient to determine that we can strip this man down and
17 call him a drug dealer.

18 Dr. Gharibo, we talked about him a couple minute. I
19 want to reemphasize what I think is a pretty basic point and
20 that is that clearly he had his opinions as to what he thinks
21 would be the appropriate medical care under the circumstances
22 and how you must start with a particularly low dosage and then
23 progress upwardly. How you can't keep someone on medication
24 for an extended period of time. I just want you to remember
25 one thing: This isn't about who is a better doctor. This

IC46TAY2

Summation - Mr. Carnesi

1 isn't about whose procedures made more sense. This is about a
2 criminal case.

3 Dr. Gharibo enjoys his privilege to practice medicine
4 in the State of New York because. He is granted a license by
5 the Department of Health of New York State as is Dr. Taylor.
6 The New York State Department of Health has within in it what
7 is referred to as the Board of Professional Medical Conduct.
8 It's not opinions. They are the board that acts on behalf of
9 New York State to determine whether or not you are fit to
10 practice medicine in New York State or whether or not there is
11 a need for you to be disciplined within New York State.

12 What Dr. Gharibo told you is, Well, yeah, his opinion
13 is you have to start no more than 40 milligrams a day, but that
14 board has no such regulation. That board does not require that
15 a doctor write less than 240 pills a month or 180 pills a
16 month. That board does not say that a doctor cannot prescribe
17 a certain type of medication for more than a year. If you
18 think about it, there's pretty good reason for that. Because
19 what they want to do is they want to allow a certain degree of
20 independence, a certain degree of flexibility to the doctor --
21 the doctor's knowledge, the doctor's experience, the doctor's
22 interaction with the patients. So they don't want hard and
23 fast computer rules.

24 You saw all these records that are all generated. How
25 simple would it be if that was the standard medical practice?

IC46TAY2

Summation - Mr. Carnesi

1 Just think about this for a moment. Standard medical practice
2 as Dr. Gharibo says can't, cannot, it is not medically
3 responsible to write a prescription for more than 40 milligrams
4 of Oxycodone a day.

5 So what happens? What happens with all these
6 prescriptions now? The first prescription is written. The
7 prescription goes out. There is a computer system. The
8 pharmacist has to file it. There is a record, John Marino
9 received a prescription today and John Marino's prescription
10 covered -- pick a number -- I said 40. Let's say it covered
11 90 milligrams a day. It's above our guideline. It goes into
12 the computer. The computer now knows John Marino. We have no
13 other prescriptions for him. This is the first prescription,
14 90 milligrams a day. Bing, bing, bing. The red flag goes off.
15 Call the doctor. Doc, that is not a medically approved
16 prescription. You cannot write that. It is against our
17 regulations. It is very simple -- very simple -- thing to
18 police.

19 That is not what they do. The reason they don't do it
20 is because they want the doctors practicing medicine. They let
21 the doctors decide and the doctors decide what Dr. Gharibo told
22 you. If they are dealing with their own patients, let me tell
23 you, I talk to my parents. I ask him, How often do you have
24 the pain? What is the pain? Describe the pain. He told you
25 despite the tests, despite whatever other things or steps we

IC46TAY2

Summation - Mr. Carnesi

1 may take, what we rely on primarily is what the patients told
2 us. That is the fundamental part of our diagnosis.

3 Think about that for a minute. That is the way he
4 practices medicine. He will not act unless he is spoken. He
5 will not have an opinion regarding his patient unless he has
6 spoken to the patient. Then ask yourself, he came in,
7 collected his check, and gave you an opinion based on 12 files
8 of patients he never spoke to. Wouldn't do it in his practice,
9 but he will criticize him -- he will criticize him -- because,
10 oh, he didn't need to talk to him.

11 You saw little snippets of video. He commented on
12 videos. Would you agree 100 percent. Were any of them the
13 initial visits? No. Were they follow-ups? Essentially the
14 follow-up. How you doing? How is the pain? Is it manageable?
15 Medication working? Have any adverse effects? He may not have
16 asked all those questions directly, but that is what they were
17 about.

18 If I am the doctor and you are coming in to see me and
19 you are having a problem with your medication, you are going to
20 tell me. Doc, I cannot sleep at night when I am taking this
21 medication. Doc, it has got me bouncing off the walls. It is
22 this or that. If you are there what is, Yeah, it's okay? What
23 does that mean? It means the course of treatment we're taking,
24 it's allowing me to function. It doesn't hurt as much anymore.
25 It is working. What else do we got to know?

IC46TAY2

Summation - Mr. Carnesi

1 It's like walking in the middle of the movies into two
2 minutes of a snippet of a movie and figure out what happened
3 before that. You can't. It is relevant for those two minutes
4 for what it was, a follow-up visit, how you doing.

5 Well, there are things Mr. Rodriguez pointed out that
6 he should have known. He should have been more suspicious or
7 he should have questioned this or questioned that. Well, he is
8 a product of his experience. He is at this point in his life a
9 man of advanced age. It may have been an easy target. These
10 people may have been particularly good at what they did.

11 You heard Christine Oakes and you heard her tape and
12 you heard Mr. Rodriguez again. Think about Christine Oakes.
13 Agent Del Rosario testified and he mentioned her. And that
14 man, he is good at what he does. He is a smart, professional
15 young man at the top of his game and his game is to be
16 suspicious and suspect of the people he meets professionally.
17 And he meets Christine Oakes and what does he know about
18 Christine Oakes when he meets her? He knows she is a drug
19 dealer. They surveilled her before he said two words to her.
20 They caught her in drug deals. He knows she is a drug dealer.

21 He brings her into the office to try to speak to her
22 and she's amenable and she wants to cooperate. She wants to
23 make a deal because she doesn't want trouble for what she did.
24 I don't know what her voice sounded like then. I don't know
25 what her voice sounds like. In any event, he says to her, We

IC46TAY2

Summation - Mr. Carnesi

1 surveilled your other drug deals. We caught you. Me? No, not
2 me. We did, yeah. Here, let's go to the videotape.

3 He put it up on the tape for her. She looks at
4 herself on the tape being video-taped in the middle of these
5 drug deals -- multiple drug deals -- and looks the man in the
6 eye and says, No, that's a lie. That's not me. But he decides
7 let's make a deal with her anyway. So you know she is a drug
8 dealer. You know she is a stone-cold liar. He made a
9 decision, let's make a deal with her because, you know, she'll
10 be honest with us at this point. Right? We can trust her.

11 What happened? Well, then you find out that she made
12 an unauthorized visit. You weren't aware of that. She got a
13 prescription filled. And of that bottle of 240 pills or so,
14 210 disappeared. 210 disappeared within days of filling that
15 prescription. Smart, professional, certainly not gullible, at
16 the top of his game, young, sharp man she got over on him. She
17 did. They were good. They were good at what they did. If
18 they could fool him, fooling him was not all that hard.

19 Thank you, ladies and gentlemen. Please keep an open
20 mind. Hold them to their burden of proof. Thank you.

21 THE COURT: Any rebuttal summation?

22 MR. ROOS: Yes, your Honor.

23 Mr. Carnesi, just spent the last hour or so talking to
24 you and trying to talk you out of your common sense. Because
25 your common sense, well, it tells you that the defendant, David

IC46TAY2

Rebuttal - Mr. Roos

1 Taylor, was not running a medical practice. He was running a
2 pill mill.

3 Now, you know what Mr. Carnesi didn't mention? The
4 across-the-board pill numbers, the high maximum doses of
5 Oxycodone. Your common sense tells you that a doctor who
6 believes he is legitimately prescribing medicine, he is not
7 writing prescription after prescription after prescription of
8 180 Oxycodone, 240 Oxycodone. An expert called this number a
9 nonhuman dose of Oxycodone because it is so ridiculously large.

10 You know what else he didn't mention? The letter from
11 the fire department where the doctor said, Hey, this guy is
12 good enough to exercise but still just kept giving him that
13 Oxy. Your common sense tells you that is no legitimate doctor.
14 No legitimate doctor does that after a five-minute visit, no
15 physical exam, no questions.

16 A doctor who is actually engaged in pain medicine
17 practice doesn't give Oxycodone to a guy like Vito Gallicchio.
18 You heard all sorts of things about this doctor being tricked.
19 We're going to talk about that, but tricked by video, a guy who
20 clearly didn't need the Oxycodone. No, no, your common sense
21 tells you that is not right.

22 Guess what? It is not just Vito. It is Vito's wife.
23 She got those 240 pills. It is his brother and nephew and the
24 nephew's roommate and the driver and the driver's wife and the
25 local pizza delivery guy. They all got 240 Oxy also, but the

IC46TAY2

Rebuttal - Mr. Roos

1 doctor was tricked. That is what Mr. Carnesi is telling you.

2 Your common sense tells you that is not the case.
3 Your common sense tells you doctors don't get boxes of cigars
4 and they don't get bottles of whiskey that can lie in their
5 houses. They don't get refrigerators and washer and dryers.
6 There are not \$150 payments in cash to the doctor in the exam
7 room or 5,000 in an envelope passed. You know what you don't
8 hear? Rent payments. Vito Gallicchio giving out rent
9 payments. No, your common sense tells you that is not pain
10 management. It is called drug dealing.

11 This hasn't been a long trial, folks. It hasn't been
12 a complicated one. Mr. Rodriguez summarized the evidence.
13 David Taylor prescribed thousands of pills of Oxycodone to
14 people he knew did not need it. That is why he is guilty.

15 Now, it is the government's burden of proof in this
16 trial. We embrace that burden. The defense doesn't have to
17 say anything. It doesn't have to do anything. It doesn't have
18 to make any arguments; but when they do -- and Mr. Carnesi just
19 made a number of them -- you should scrutinize them. You
20 should think about them carefully. What he is saying makes
21 sense? Is it supported by the evidence?

22 I am not going to address everything that he said. He
23 spoke for about an hour and frankly I don't have the time to
24 address it, but I don't think you need me to address all of it.
25 You paid close attention. You know the answer to many of the

IC46TAY2

Rebuttal - Mr. Roos

1 things he posited. He said, Well, there is a lot of things
2 that happens when someone says the word okay. Folks, you know
3 what the meaning of okay is. It is not a hidden meaning there.
4 You don't need me to tell you about it.

5 He talked about the office staff who was actually
6 responsible for the whole conspiracy. Folks, you know the
7 answer there. You know there wasn't one office person who is
8 actually behind the whole conspiracy. You don't need me to
9 tell you that.

10 What I do want to talk about is a few points about the
11 conspiracy and what the doctor knew.

12 (Continued on next page)

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Ic4ntay3

Rebuttal - Mr. Roos

1 Mr. Carnesi, well, he started out with this argument
2 that there needs to be something more of an agreement,
3 something more explicit than a wink and a nod. That is not
4 right. That's actually not correct. I expect Judge Carter
5 will instruct you that an agreement does not need to be
6 explicit.

7 You should listen to Judge Carter when he gives you
8 these instructions. It would in fact be quite unusual for an
9 an agreement to be explicit.

10 Nick Avicolli, he said between two professionals you
11 don't need to say it explicitly. There is an understanding.
12 There is no explicit conversation that is required. They had
13 an understanding, a wink and a nod: You write the
14 prescription, I will fill it, we both make money.

15 The same was said by Larry Montalbano. He
16 understood -- and you remember the sort of the line one hand
17 washes the other, both hands wash the face, you do for me, I do
18 for you.

19 That is an agreement. That is an understanding. Even
20 if it were necessary for there to be an explicit agreement, you
21 have that. You've got it. Vito told Larry I need to give
22 \$5,000 in cash to the doctor or else we are all out of
23 business. That is explicit.

24 Let me just say something about what you heard from
25 some of these patients up there on the witness stand under oath

Ic4ntay3

Rebuttal - Mr. Roos

1 about what Vito said to them.

2 Mr. Carnesi, you know, he's saying, well, you didn't
3 hear from Vito, and Vito, he is a bad guy. You can't trust the
4 things he's saying. Each of those witnesses was asked, Hey,
5 was Vito a liar? Was he boastful?

6 Yeah, he's a bad guy. But did he make these things
7 up? Each of them said no. Mr. Carnesi pressed them on this,
8 and each time they said no.

9 Why would Vito make up something like I had to give
10 \$5,000? No one wants to part with their money. Why would you
11 brag and say he forced me to give \$5,000 or else we would all
12 be kicked out?

13 It doesn't make sense. That's why you know they are
14 telling the truth.

15 There are some other reasons why you know the
16 witnesses are telling the truth. Their incentives, their
17 incentives to tell the truth. You have heard about that.
18 There's other evidence that shows they are telling the truth.
19 For instance, when they say we gave gifts. Vito gave a
20 refrigerator. He told me. Folks, you saw the receipt from the
21 refrigerator. You saw the receipt for the washer dryer
22 purchased by Vito shipped to David Taylor.

23 You don't need to rely solely on the witnesses you
24 heard. There is evidence that backs up what they say. Now,
25 Mr. Carnesi, he spent the majority of his time talking about

Ic4ntay3

Rebuttal - Mr. Roos

1 how the doctor, well, he was tricked. He was duped.

2 Really? Do you believe this story? This is all
3 happening right in front of Dr. Taylor, and he didn't know.
4 According to Mr. Carnesi, basically a doctor needs the
5 equivalent of a Price is Right, where you've got lights
6 flashing and everyone then is alerted to the red flags that are
7 right in front of them.

8 Your common sense tells you that's not the case. And
9 Mr. Rodriguez went through all of the evidence of why the
10 doctor knew exactly what was going on, so I am not going to go
11 through it all. I don't need to waste your time with that.

12 But you know what I do want to point out? You know
13 who wasn't tricked? The patients. They said it was known if
14 you wanted oxy, you go to Dr. Taylor. They knew why everyone
15 in the exam room was there, to get oxycodone.

16 Who else wasn't tricked?

17 The office manager, Lisa Mercado. No medical
18 training, didn't work with the doctor for that long, but she
19 sees it like it is. There is a lot of diversion and a lot of
20 addicts in the waiting room.

21 Who else? The pharmacist, Nick Avicolli. He said
22 just the way they walked in was a clue. The way they spoke.
23 The fact that they said, How's the day going? Let's talk about
24 the Yankees. Those were clear signs to him that they didn't
25 need those pills.

Ic4ntay3

Rebuttal - Mr. Roos

1 Then, of course, the other pharmacists and the
2 insurance companies that were sending letters and putting
3 Dr. Taylor on the banned list. It was clear to them. But it
4 wasn't clear to this guy. That's what you are hearing here.
5 Folks, that's ridiculous. It's clearly ridiculous.

6 You know, Mr. Carnesi said you are at the mercy of
7 these patients when you're the doctor, and that's not right.
8 That's contrary to your common sense. Dr. Gharibo said you
9 don't just take their word for everything. You run advanced
10 diagnostic tests, look at the chart, you ask probing questions.
11 You don't just say, How you doing? OK. 180 oxy.

12 But you don't need an expert to tell you those things.
13 You don't need an expert to say what is already intuitive to
14 you. You don't need an expert also to tell you that this was
15 not a medical practice, and you don't need an expert to say you
16 have got to do some type of physical exam. You should ask
17 questions about the pain, you should consider doing an MRI, you
18 should prescribe something other than a painkiller that is the
19 equivalent of heroin, and maybe you shouldn't take gifts and
20 cash and money and all of these things.

21 That's why this is not a medical practice.

22 Now, Mr. Carnesi called out a few of patients. I'm
23 not going to go through all of them, but I want to make a few
24 observations.

25 John Marino, football player, basketball player, mixed

Ic4ntay3

Rebuttal - Mr. Roos

1 martial arts, goes to the gym five nights a week. This is not
2 the type of person who needs oxycodone, and Dr. Taylor knew
3 that just from how he presented.

4 But what did he write in the chart? Limp. That tells
5 you something. You don't make up things and put them in a
6 chart unless the whole thing is a giant charade.

7 Who was John Marino's roommate? That is somebody you
8 didn't hear about. It's Don Carim. And Don Carim is the one
9 who got the letter from the New York City Fire Department,
10 because he's able to run a mile and a half and sure can do some
11 pushups, but in the months after he writes that letter, he
12 keeps giving him oxycodone.

13 I want to say a few words about urinalysis testing.

14 Number one, don't get distracted. The urine testing
15 is just a small part of a much larger issue in this case, which
16 is that these prescriptions were not medically necessary. But
17 think about the things that Mr. Carnesi did tell you about the
18 urine tests. Even if he can or can't understand what
19 noroxycodone metabolites are, it doesn't matter, but there are
20 urine tests that showed people testing negative for oxycodone.

21 There were urine tests showing Don Carim testing
22 positive for cocaine; people testing positive for drugs this
23 doctor wasn't prescribing. That tells you something. You
24 don't need to go to medical school to know that. Although,
25 hey, we heard you learned this thing about the metabolites in

Ic4ntay3

Rebuttal - Mr. Roos

1 the second year of medical school.

2 And you know what else? Those urinalysis charts --
3 and they are in evidence, you can take a look at them -- they
4 say in block letters review, and right next to it the doctor's
5 signature.

6 So don't get hoodwinked into this idea that the urine
7 tests matter or that somehow somebody manipulated a urine test
8 and that makes a difference. By the way, the testimony or the
9 stipulation about that woman, Denise Suarez, is that she didn't
10 even do that for Vito's patients.

11 Let me say a word about the law here. Judge Carter
12 will instruct you about the law that applies in this case.
13 He's going to tell you there are two ways you can find the
14 defendant guilty of the conspiracy.

15 The first, he knew that the prescriptions he was
16 writing weren't medically necessary. That's been proven. You
17 know that.

18 The second is that he can deliberately shut his eyes
19 to what otherwise would be obvious. That's called conscious
20 avoidance, willful blindness. If Dr. Taylor was aware that it
21 was very likely that his prescriptions weren't medically
22 necessary and he just kept writing them anyways while
23 deliberately avoiding confirming, learning that they weren't
24 necessary, then that is another way he's guilty.

25 You heard a bunch of evidence about that, too. There

Ic4ntay3

Rebuttal - Mr. Roos

1 are all these red flags right in front of him and he
2 deliberately avoided confirming the fact that Vito's crew
3 didn't need the pills. He didn't examine them, he didn't urine
4 test them, he ignored their bad urine tests, he didn't ask them
5 if they were taking the pills. Why not? He avoided asking
6 those questions because if he did, he would have confirmed what
7 he already knew: These people didn't need the oxy.

8 Common sense doesn't get checked at the door of the
9 examining room. That's why you know that the doctor knew.
10 Don't let Mr. Carnesi convince you to check your common sense
11 at the door of the courtroom.

12 Mr. Carnesi, well, he made a point about the experts.
13 The expert, you know, he has a practice that's sort of what we
14 would dream of for a medical practice. But you know the doctor
15 was doing things different. The doctor sort of was doing
16 hospice.

17 You know this doesn't make any sense. First of all,
18 Vito's people, not in hospice. None of them are dying. We
19 know that because Vito gets his pills for a decade, 240, 180
20 for a decade. The same with his wife, the same with his
21 nephew, the same with his nephew's roommate, the same with the
22 pizza guy.

23 It's not about who's a better doctor. We agree about
24 that. This is a criminal case. This wasn't about mistakes in
25 prescribing. This doctor was selling pills out of his office

Ic4ntay3

Rebuttal - Mr. Roos

1 with a prescription pad.

2 So let me talk about what he was getting. Defense
3 counsel, he sort of belittles this and he says, you know what,
4 steaks and cigars, really? Like he sells his medical practice
5 out for steaks and cigars?

6 You know it is more than that. Dr. Taylor, he needed
7 the business. You heard the testimony. He got kicked out of
8 one medical practice, and he needed Vito's help to start a new
9 one, to pay the rent, to draw in the patients. That's his
10 motive. The more patients, the more business, the more money.

11 Vito brought the people to him. That's why it made
12 sense.

13 The same way for Nick Avicolli. It made sense to have
14 a volume business, the more people bringing in prescriptions.
15 It made since for the doctor.

16 just think about the math a little bit. Taylor, he
17 charged something like 50 to 150 per visit, right? You saw the
18 chart that said he wrote 20,000 oxycodone prescriptions.

19 So do the math. 20,000 visits. Now, not all of those
20 are Vito's crew, but you saw evidence of hundreds if not
21 thousands of them were Vito's crew. That's a lot of money.
22 Let's say a hundred dollars times a thousand or 20,000 if
23 they're all bad prescriptions. That's millions.

24 That's why it made good financial sense for Taylor to
25 turn his practice into a pill mill. That's not even counting

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Rebuttal - Mr. Roos

1 the side payments that Vito made.

2 There are other bribes, some big, some small, like a
3 TV, a washer dryer, refrigerator, whisky, cigars, steaks,
4 chicken parm.

5 It is not just about the steaks and cigars. It is a
6 cash business. It makes good financial sense. And, hey, once
7 you sold your business out, at that point you might as well
8 just ask whatever else you want. The extra perks, the chicken
9 parm, the steaks, cigars. Vito's living a good life. The
10 doctor wants it too. That's why when he wants something he
11 gets it.

12 I am going to sit down in just a moment. You have
13 heard enough talking from the lawyers today. You have paid
14 very close attention. We appreciate that. You have seen the
15 evidence. You have heard the witnesses.

16 So, let me just leave you with this: Just because a
17 case goes to trial doesn't make it hard. It doesn't make it
18 complicated. It doesn't make it close. This is not a close
19 case.

20 You know what happened. David Taylor flooded the
21 streets with a highly addictive, powerful drug, a drug similar
22 to heroin that destroys lives. Why he did it doesn't really
23 matter. What matters is that there was no medical reason for
24 it. He wrote prescriptions for oxycodone that people did not
25 need, and he knew it.

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Rebuttal - Mr. Roos

1 He knew it, but he kept prescribing them anyways.

2 This was all choice. He wasn't tricked. He wasn't
3 duped. It wasn't a giant conspiracy against Dr. Taylor. He
4 was part of the conspiracy. He was part of the conspiracy with
5 Vito and his crew, and he did very well by it and he did it for
6 years.

7 It was destructive. Its effects are tragic. That's
8 why it's a crime. He knew what he was doing, and now it's time
9 to hold him accountable for what he's done. He's guilty.

10 THE COURT: OK, members of the jury. We are going to
11 take our break for 30 minutes. Don't discuss this case amongst
12 yourselves, don't discuss it with anyone else, and don't let
13 anyone discuss it with you. Don't conduct any independent
14 research regarding any of the issues, parties, and locations in
15 this case. See you in 30 minutes.

16 (Jury not present)

17 THE COURT: OK. I will see counsel in 30 minutes.

18 One other thing. You can all sit down. One of the
19 things I guess we should discuss. Let me tell counsel what my
20 intentions are with the alternates, and then I will hear from
21 counsel.

22 My intention is to not dismiss the alternates from
23 jury duty, but allow them to leave and go home and give them
24 the instructions we've always been giving them not to discuss
25 this case with anyone and not conduct any research. That way,

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Rebuttal - Mr. Roos

1 if we need them at some point to substitute for one of the
2 deliberating jurors, they can. Defense counsel or the
3 government have any position on that? Any objection to that
4 rather?

5 MS. FLETCHER: No objection.

6 MR. CARNESI: No objection, Judge.

7 THE COURT: OK. See you in 30.

8 (Luncheon recess)
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Rebuttal - Mr. Roos

1 AFTERNOON SESSION

2 (12:25 p.m.)

3
4 THE COURT: I didn't get any comments from counsel
5 regarding a verdict form. Here's a copy of the verdict form,
6 if someone can come get it and share it with counsel.

7 MR. RODRIGUEZ: Your Honor, I have taken the verdict
8 form from you which we previously received from your chambers.
9 We have reviewed it and have no comments on it.

10 I will hand the copy that the Court gave me to defense
11 counsel.

12 MR. CARNESI: It is fine.

13 THE COURT: The other thing I will let you know. I
14 don't plan on reading the captions for the preliminary portions
15 of the instructions. I will certainly read the captions when
16 we get to the substantive law in this area, but I am not going
17 to read the captions for things such as role of the jury role
18 of the Court, evidence and so forth.

19 Any objection to that by either side.

20 MR. RODRIGUEZ: No objection.

21 MR. CARNESI: No objection.

22 THE COURT: All right.

23 MR. RODRIGUEZ: Your Honor, can I raise one question?

24 THE COURT: Sure.

25 MR. RODRIGUEZ: The government is sort of inquiring

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Rebuttal - Mr. Roos

1 what the Court's plan is with respect to how long the jury can
2 be deliberating today, if the Court is going to send the jury
3 home at 3 o'clock as we have been doing, or you are going to
4 give the jury the option of staying later if that is something
5 that they wants to do.

6 THE COURT: Here's what my thoughts are, and I will
7 hear from counsel. My thoughts are we would dismiss them at 3
8 o'clock; however, make ourselves available until 5 o'clock if
9 the jury sends us some sort of note indicating that they would
10 like to deliberate longer today. We can do that. But other
11 than that, it would be my intention to simply dismiss them at 3
12 o'clock, as we have been doing. I don't want to just volunteer
13 to them before they ask anything that we can stay a little bit
14 longer today. I don't want do anything like that.

15 What are counsel's thoughts on that?

16 MR. CARNESI: That is fine with me.

17 MR. RODRIGUEZ: So, your Honor, just to be clear, I am
18 not quite sure I understood. It sound like the Court's
19 intention is, if the jury asks to stay later, we would make
20 ourselves available to do that until 5 o'clock.

21 THE COURT: Correct.

22 MR. RODRIGUEZ: But the Court would in the first
23 instance tell them we are being dismissed at 3?

24 THE COURT: I don't plan on telling them anything. I
25 plan on, once they start deliberating, they deliberate. At 3

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Rebuttal - Mr. Roos

1 o'clock, if we haven't heard anything from them, it would be my
2 intention to bring them out and dismiss them.

3 What may happen is, if they want to stay later,
4 perhaps at 2:52 or 2:53 they will send out a note saying they
5 would like to stay later; or, if they come out at 3 o'clock and
6 I say we are going to dismiss you for the day and people start
7 raising their hands and say, Oh, we'd like to stay longer, then
8 we can deal with that. If they ask to stay longer, I would
9 consult with counsel, but it would be my intention to let them
10 know we available to you until 5 p.m. today.

11 MR. RODRIGUEZ: Understood, your Honor. It
12 respectfully it would be the government's preference for the
13 Court to inform the jurors of that potential option rather
14 than, you know, see if there is a possibility of getting a
15 note, which they may not know that the option is available or
16 them otherwise signaling from the jury box, but making clear
17 that the government would have no objection if the Court made
18 clear that we have been dismissing every day at 3 o'clock and
19 so if not everyone is available to stay until 5, that is
20 certainly fine. But it would be the government's preference to
21 flag that potential option for the jury in some way.

22 THE COURT: My concern, and again I will hear from
23 defense counsel on this in a second, is that we have been
24 dismissing them at 3 o'clock every day. If all of a sudden
25 today we suggest to them that they have the option of staying

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Rebuttal - Mr. Roos

1 until 5, I'm concerned that that may be putting just a slight
2 bit of pressure on them to think that, oh, we need to come up
3 with a verdict by 5 o'clock today, especially if there are
4 jurors who have other situations and they have to adjust
5 schedules.

6 I would rather them do that on their own, voluntarily
7 say to us they would like to stay later than to suggest
8 something to them once they start their deliberations. I think
9 that that could be seen as putting a little bit of pressure on
10 them, and I don't want to do that.

11 What's defense counsel's view on that?

12 MR. CARNESI: I agree with that the Court on that.

13 THE COURT: Again, as we've seen from this jury, they
14 don't strike me as particularly shy, but we'll see.

15 MR. RODRIGUEZ: Understood, your Honor. The
16 government doesn't necessarily see that risk, but we have no
17 objection to proceeding that way.

18 THE COURT: OK. The jurors do know that the plan is
19 that we will not be sitting tomorrow. They know that. So that
20 may be another reason why they might on their own suggest to us
21 that we stay late, and, if so, we can do that.

22 MR. RODRIGUEZ: Understood. Thank you.

23 THE COURT: I don't want to suggest that to them in
24 the first instance.

25 Is the jury ready, Tara.

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Rebuttal - Mr. Roos

1 THE DEPUTY CLERK: Yes, Judge.

2 THE COURT: Bring them in.

3 (Jury present)

4 THE COURT: Please be seated.

5 I am going to now give you the instructions on the
6 law. It's important that you listen to my instructions but you
7 don't need to take notes, because when you start your
8 deliberations each of you is going to be given a written copy
9 of these instructions.

10 It is my duty at this point to instruct you on the
11 law. It is your duty to accept these instructions and apply
12 them to the facts as you determine them. Regardless of any
13 opinion you may have as to what the law may be or should be, it
14 would violate your duty to base a verdict on any other view of
15 the law than the one I give you. If an attorney has stated a
16 legal principle differently than I state it to you, it is my
17 instructions that you must follow.

18 You should not single out any instruction, but you
19 should consider my instructions as a whole when you retire to
20 deliberate the verdict. You may take a copy of these
21 instructions with you into the jury room.

22 Your role is to decide the facts of the case. You are
23 the sole and exclusive judges of the facts. You must determine
24 the facts based solely on the evidence received in this trial.
25 In determining the facts, you must rely upon your own

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Rebuttal - Mr. Roos

1 recollections of the evidence. What the lawyers have said, for
2 instance, in opening statements, in closes arguments, in
3 objections, or in questions is not evidence. You should bear
4 in mind particularly that a question put to a witness is not
5 evidence. It is only the answer that is evidence.

6 The lawyers' arguments are intended to convince you to
7 draw certain conclusions from the evidence or lack of evidence.
8 Those arguments are important. You should weigh and evaluate
9 them carefully, but you must not confuse them with the
10 evidence. As to what the evidence was, it is your recollection
11 that governs, not the statements of the lawyers. You should
12 draw no inference or conclusion for or against any party by
13 reason of the lawyers' making objections or my rulings on those
14 objections.

15 The attorneys have a duty to make legal objections
16 when they think that such objections are appropriate. You
17 should not be swayed against the government or the defendant
18 simply because counsel for either side has chosen to make an
19 objection. Similarly, statements made by counsel when arguing
20 the admissibility of evidence are not to be considered as
21 evidence.

22 I remind you also that nothing I have said during the
23 trial or during these instructions is evidence. Similarly, the
24 rulings I have made during the trial are not any indication of
25 my views of what your decision should be. My rulings were

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Rebuttal - Mr. Roos

1 based solely on issues of law. Do not concern yourselves with
2 what was said at sidebar conferences or during my discussions
3 with counsel. Those discussions related to rulings of law and
4 not to matters of fact.

5 The law recognizes two types of evidence, direct and
6 circumstantial. You may rely on either type of evidence.
7 Direct evidence is evidence that, if believed, directly shows a
8 fact. For instance, one kind of direct evidence is a witness's
9 testimony about something she knows by virtue of her own
10 senses, something the witness has seen, felt touched or heard.
11 Direct evidence may also be in the form of an exhibit.

12 Circumstantial evidence is a chain of circumstances
13 that indirectly proves a fact. Stated differently,
14 circumstantial evidence is a fact or series of facts that, if
15 believed, leads to a conclusion that another fact exists. For
16 example, if a witness testified that she saw it raining
17 outside, and you believed her, that would be direct evidence it
18 was raining. If someone walked into the courtroom wearing a
19 raincoat covered with drops of water and carrying a wet
20 umbrella, that would be circumstantial evidence from which you
21 could conclude it was raining.

22 Circumstantial evidence is as valuable as direct
23 evidence. The law makes no distinction between them. There
24 are times when different inferences may be drawn from the facts
25 whether they are proven by direct or circumstantial evidence.

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Rebuttal - Mr. Roos

1 The government asks you to draw one set of inferences. The
2 defendants ask you to draw another. It is for you, and you
3 alone, to decide what inferences you will draw.

4 Much of the evidence you heard was presented to you in
5 the form of testimony from witnesses. First, let me remind you
6 that it is for you, and you alone, to decide the credibility of
7 witnesses who appeared here and the weight their evidence
8 deserves. Your determination of the credibility of a witness
9 largely depends upon the impression the witness made upon you
10 as to whether or not he or she was giving an accurate version
11 of what occurred.

12 The degree of credit given to a witness should be
13 determined by his or her demeanor, relationship to the
14 controversy and the parties, bias or impartiality, the
15 reasonableness of the witness's statement, the strength or
16 weakness of the witness's recollection viewed in light of all
17 other testimony, and the attendant circumstances in the case.
18 In passing upon the credibility of a witness, you may also take
19 into account any inconsistencies or contradictions as to
20 material matters in his or her testimony.

21 You may consider whether a witness had, or did not
22 have, a motive to lie. If a witness had a motive to lie, you
23 may consider whether and to what extent, if any, that motive
24 affected the truthfulness of that witness's testimony. If a
25 witness did not have a motive to lie, you may consider that as

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Rebuttal - Mr. Roos

1 well in evaluating the witness's truthfulness.

2 If you find that any witness has willfully testified
3 falsely as to any material fact, you have the right to reject
4 the testimony of that witness in its entirety. On the other
5 hand, even if you find that a witness has testified falsely
6 about one matter, you may reject as false that portion of his
7 or her testimony and accept as true any other portion of his or
8 her testimony. A witness may be inaccurate, contradictory, or
9 even untruthful in some aspects, and yet be truthful and
10 entirely credible in other aspects of his or her testimony.

11 The ultimate question for you to decide in passing
12 upon credibility is, did the witness tell the truth before you?
13 It is for you to say whether his or her testimony at trial is
14 truthful in whole or in part in light of the witness's demeanor
15 and explanations and all of the evidence in the case.

16 In evaluating the credibility of witnesses, you should
17 take into account any evidence that the witness who testified
18 may benefit in some way from the outcome of this case. Such an
19 interest in the outcome creates a motive to testify falsely,
20 and may sway the witness to testify in a way that advances his
21 or her own interest. Therefore, if you find that any witness
22 whose testimony you are considering may have an interest in the
23 outcome of this trial, then you should bear that factor in mind
24 when evaluating his or her credibility and accept it with great
25 care.

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1 This is not to suggest that every witness who has an
2 interest in the outcome of a case will testify falsely. It is
3 for you to decide to what extent, if at all, a witness's
4 interest has affected or colored his or her testimony.

5 You've heard evidence that, at some earlier time,
6 witnesses have said or done something that counsel argues is
7 inconsistent with their trial testimony. Evidence of a prior
8 inconsistent statement was placed before you only for the
9 purpose of helping you to decide whether to believe the
10 testimony of a witness who may have contradicted a prior
11 statement he or she made. If you find that the witness made an
12 earlier statement that conflicts with the witness's testimony,
13 you may consider that fact in deciding how much of the
14 witness's testimony, if any, to believe.

15 In making this determination, you may consider whether
16 the witness purposely made a false statement or whether it was
17 an innocent mistake; whether the inconsistency concerns an
18 important fact or whether it had to do with a small detail;
19 whether the witness an explanation for the inconsistency and
20 whether that explanation appealed to your common sense.

21 It is exclusively your duty, based upon all the
22 evidence and your own good judgment, to determine whether the
23 prior statement was inconsistent, and if so, how much, if any,
24 weight to give to the inconsistent statement in determining
25 whether to believe all or part of the witness's testimony.

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Rebuttal - Mr. Roos

1 Some of you took notes periodically throughout this
2 trial. I want to emphasize to you that notes are simply an aid
3 to your memory. Notes that you may have made should not be
4 given greater weight or influence than the recollections or
5 impressions of other jurors with respect to the evidence
6 presented or what conclusions, if any, should be drawn from
7 such evidence. All jurors' recollections are equal.

8 Some of the exhibits received in evidence at this
9 trial were in the form of charts. Some of those charts were
10 introduced as summaries. Summary charts are not themselves
11 direct evidence. They are instead summaries or analyses of
12 evidence that was received either in the form of documents or
13 testimony. The charts were intended to assist you in your
14 deliberations. However, it is the underlying evidence and the
15 weight that you attribute to it that gives value and
16 significance to these charts. To the extent that the charts
17 conform to what you determine the underlying evidence to be,
18 you should accept them. To the extent that the charts differ
19 from what you determine the underlying evidence to be, you may
20 reject them.

21 You are to perform the duty of finding the facts
22 without bias or prejudice as to any party. You are to perform
23 your final duty in an attitude of complete fairness and
24 impartiality.

25 The case is important to the government, for the

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Rebuttal - Mr. Roos

1 enforcement of criminal laws is a matter of prime concern to
2 the community. Equally, it is important to the defendant, who
3 is charged with a serious crime.

4 The fact that the prosecution is brought in the name
5 of the United States of America entitles the government to no
6 greater consideration than that given to any other party. By
7 the same token, the government is entitled to no less
8 consideration.

9 The indictment is not evidence. It is an accusation,
10 a statement of what the government intends to prove by offering
11 evidence at trial. It gives the defendant notice of the
12 charges against him and states the nature of the accusations.

13 Because the indictment is not evidence and does not
14 prove guilt, you are to give it no weight. Nor are you to
15 attempt to consider how the indictment was obtained. A
16 defendant begins trial with a clean slate and without any
17 evidence against him or her. What matters is the evidence that
18 you heard and saw during the trial.

19 The defendant is formally charged in an indictment.
20 The indictment consists of charges or accusations. It is not
21 evidence. I will not read the entire indictment to you at this
22 time. Rather, I will first summarize the offense charged in
23 the indictment. Then I will explain in detail the elements of
24 the offense.

25 Before I do so, however, I need to define the term

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Rebuttal - Mr. Roos

1 reasonable doubt. The government must prove each element of
2 the crime beyond a reasonable doubt. Since, in order to
3 convict the defendant of a given charge, the government is
4 required to prove that charge beyond a reasonable doubt, the
5 question then is, what is a reasonable doubt? The words almost
6 define themselves. It is a doubt based upon reason. It is a
7 doubt that a reasonable person has after carefully weighing all
8 of the evidence. It is a doubt that would cause a reasonable
9 person to hesitate to act in a matter of importance in his or
10 her personal life. Proof beyond a reasonable doubt must,
11 therefore, be proof of a convincing character that a reasonable
12 person would not hesitate to rely upon in making an important
13 decision.

14 A reasonable doubt is not caprice or whim. It is not
15 speculation or suspicion. It is not an excuse to avoid the
16 performance of an unpleasant duty. The law does not require
17 that the government prove guilt beyond all possible doubt.
18 Proof beyond a reasonable doubt is sufficient to convict.

19 If, after fair and impartial consideration of the
20 evidence, you have a reasonable doubt as to the defendant's
21 guilt, you must find the defendant not guilty.

22 On the other hand, if, after fair and impartial
23 consideration of all the evidence, you are satisfied beyond a
24 reasonable doubt of the defendant's guilt, you should find the
25 defendant guilty.

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Rebuttal - Mr. Roos

1 Having defined reasonable doubt, let me discuss the
2 charge. The indictment charges that the defendant, David
3 Taylor, conspired with others known and unknown to violate the
4 federal narcotics laws in violation of Section 846 of Title 21
5 of the United States Code. Specifically, the indictment
6 charges the defendant with conspiring to distribute and possess
7 with the intent to distribute oxycodone, which is a controlled
8 substance. The conspiracy charged in the indictment is alleged
9 to have taken place from at least in or around January 2012 up
10 to and including in or around June 2017.

11 Narcotics conspiracy -- elements of the offense.

12 In order to find David Taylor guilty of the conspiracy
13 charged in the indictment, you must find that the government
14 has proven beyond a reasonable doubt each of the following two
15 elements of the crime:

16 First, the existence of the conspiracy charged in the
17 indictment; in other words, that there was in fact an agreement
18 or understanding to violate those provisions of the law that
19 make it illegal to distribute narcotics;

20 Second, the defendant, David Taylor, knowingly became
21 a member of the conspiracy; that is, that he knowingly
22 associated himself with the conspiracy and participated in the
23 conspiracy to distribute narcotics.

24 The first element -- existence of a conspiracy.

25 The first element that the government must prove

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1 beyond a reasonable doubt is the existence of the conspiracy;
2 that is, the government must prove beyond a reasonable doubt
3 that two or more persons came to an agreement or understanding
4 that would try to accomplish an unlawful purpose. In this
5 case, the conspiracy charged is a conspiracy to distribute
6 oxycodone.

7 In order for the government to satisfy this element,
8 you need not find that the alleged members of the conspiracy
9 met together and entered into any express or formal agreement.

10 Similarly, you need not find that the alleged
11 conspirators stated in words or writing what the scheme was,
12 its object or purpose, or every precise detail of the scheme or
13 the means by which its object or purpose was to be
14 accomplished. Indeed, it would be extraordinary if there were
15 such a formal document or specific oral agreement. When people
16 agree to enter into a criminal conspiracy, much is left to
17 unexpressed understanding. What the government must prove is
18 that there was a mutual understanding, either spoken or
19 unspoken, between two or more people to cooperate with each
20 other to accomplish an unlawful act.

21 You may, of course, find that the existence of an
22 agreement to disobey or disregard the law has been established
23 by direct evidence. However, since conspiracy is by its very
24 nature characterized by secrecy, you may also infer its
25 existence from the circumstances of this case and the conduct

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1 of the parties involved.

2 It is not required that any particular number of
3 people join together in order for the government to prove that
4 a conspiracy existed. You need only find that two or more
5 people entered into the unlawful agreement alleged in the
6 indictment in order for you to find that a conspiracy existed.
7 In a very real sense then in the context of conspiracy cases,
8 actions often speak louder than words. In this regard, you
9 may, in determining whether an agreement existed here, consider
10 the actions and statements of all of those you find to be
11 participants as proof that a common design existed on the part
12 of the persons charged to act together to accomplish an
13 unlawful purpose.

14 Often, the only evidence available is that of
15 disconnected acts that, when taken together in connection with
16 each other, show a conspiracy or agreement to secure a
17 particular result as satisfactorily and conclusively as more
18 direct proof.

19 Of course, proof concerning the accomplishment of the
20 objectives of the conspiracy may be the most persuasive
21 evidence of the existence of the conspiracy itself. But it is
22 not necessary that the conspiracy actually succeed in its
23 purpose in order for you to conclude that the conspiracy
24 existed.

25 In short, as far as the first element of the

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1 conspiracy is concerned, the government must prove beyond a
2 reasonable doubt that the defendant and at least one other
3 alleged -- I'm sorry. The government must prove beyond a
4 reasonable doubt that the defendant and at least one other
5 alleged conspirator came to a mutual understanding, either
6 spoken or unspoken, to violate the law in the manner charged in
7 the indictment.

8 Object of the conspiracy.

9 As I have just described, the prosecution must prove
10 beyond a reasonable doubt that the defendant and at least one
11 other alleged conspirator came to a mutual understanding,
12 either spoken or unspoken, to distribute a controlled substance
13 in the manner charged in the indictment. The second part of
14 the first element relates to the object or objective of the
15 conspiracy. The object of a conspiracy is the illegal goal the
16 coconspirators agree or hope to achieve. The indictment
17 charges that the object of the conspiracy was the distribution
18 of a controlled substance, which in this case was oxycodone.

19 "Distribution" means to deliver to pass over, to hand
20 over something to another person or to cause something to be
21 delivered, passed on, or handed over to another. Distribution
22 does not require a sale, but the term includes sales.

23 Note, however, that the actual quantity of oxycodone
24 involved in the charged conspiracy is not an element of this
25 crime. So you need not be concerned with quantity in

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Rebuttal - Mr. Roos

1 determining whether the defendant is guilty or not guilty of
2 the charge. Similarly, because quantity is not an element, you
3 need not find that every -- or even a majority -- of the
4 prescriptions written by the defendant were written as a part
5 of the charged conspiracy.

6 As you have heard, oxycodone may be lawfully dispensed
7 for certain prescribed purposes, but because of its highly
8 addictive qualities, it is otherwise prohibited from being
9 dispensed. A doctor who acts outside the usual course of
10 professional practice and knowingly prescribes oxycodone for no
11 legitimate medical purpose may be found guilty of unlawful
12 distribution. On the other hand, a doctor who in good faith
13 writes prescriptions for controlled substances such as
14 oxycodone in the regular course of legitimate professional
15 practice does not violate the laws. Good faith in this context
16 means the honest exercise of best professional judgment.

17 In determining whether a doctor acted without a
18 legitimate medical purpose, you should examine all of the
19 doctor's actions and the circumstances surrounding them. For
20 example, if a doctor prescribes a drug for the purpose of
21 improving a patient's health or addressing a legitimate medical
22 need, you may consider this as proof that the doctor was
23 prescribing the drug lawfully in the usual course of
24 professional medical practice and for a legitimate medical
25 purpose. On the other hand, if a doctor prescribes a

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1 controlled substance with knowledge that the drug was not being
2 prescribed for a purpose of improving the patient's health or
3 addressing a legitimate medical need or with the knowledge that
4 the recipient of the drug was going to resell it, this may
5 suggest to you that the doctor was acting outside the usual
6 course of professional medical practice and not for a
7 legitimate medical purpose.

8 These examples are neither conclusive or exhaustive.
9 They are simply meant to give you an idea of the kind of
10 behavior from which you might conclude that a doctor was not
11 prescribing drugs for a legitimate medical purpose and was not
12 acting in the usual course of professional medical practice.

13 Thus, the government must prove beyond a reasonable
14 doubt that the object of the conspiracy in which the defendant
15 is charged was to distribute some amount of oxycodone or to
16 cause an amount of oxycodone to be distributed other than for a
17 legitimate medical purpose, other than in good faith, and not
18 in the usual course of medical practice.

19 Conscious avoidance.

20 In determining whether the government has proved
21 beyond a reasonable doubt that the defendant knew that the
22 object of the conspiracy was the distribution of oxycodone
23 using prescriptions that were written outside the usual course
24 of a medical practice and that were not written for a
25 legitimate medical purpose, you may consider whether the

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1 defendant deliberately closed his eyes to what would otherwise
2 have been obvious. One may not willfully and intentionally
3 remain ignorant of a fact important to one's conduct in order
4 to escape the consequences of criminal law. The law calls this
5 "conscience avoidance" or "willful blindness." In other
6 words, the government can prove either that the defendant
7 actually knew the objective of the conspiracy or he consciously
8 avoided knowledge of the object of the conspiracy.

9 Acts done knowingly must be a product of a person's
10 conscious intentions. They cannot be the result of
11 carelessness, negligence, or foolishness. But a person may not
12 willfully and intentionally remain ignorant of a fact that is
13 material and important to his or her conduct in order to escape
14 the consequences of criminal law. We refer to this notion of
15 intentionally blinding yourself to what is staring you in the
16 face as conscious avoidance.

17 An argument by the government of conscious avoidance
18 is not a substitute for proof of knowledge. It is simply
19 another factor that you, the jury, may consider in deciding
20 what a defendant knew. Thus, if you find beyond a reasonable
21 doubt that the defendant was aware that there was a high
22 probability that a fact was so, but that the defendant
23 deliberately and consciously avoided confirming this fact, such
24 as by purposely closing his or her eyes to it or intentionally
25 failing to investigate it, then you may treat this deliberate

Ic4ntay3

Rebuttal - Mr. Roos

1 avoidance of positive knowledge as the equivalent of knowledge.

2 That being said, you must also keep in mind that there
3 is an important difference between knowingly and intentionally
4 participating in the conspiracy -- which I will explain to you
5 shortly -- and knowing the specific objective of the
6 conspiracy. You may consider conscious avoidance in deciding
7 whether a defendant knew the objective of the conspiracy, that
8 is, whether he reasonably believed that there was a high
9 probability that a goal of the conspiracy was to commit the
10 crime charged as the object of the conspiracy, but deliberately
11 avoided confirming that fact and participated in the conspiracy
12 anyway. Conscious avoidance, however, cannot be used as a
13 substitute for finding that the defendant knowingly and
14 intentionally joined the conspiracy in the first place. It is
15 logically impossible for a defendant to intend and agree to
16 join a conspiracy if he does not actually know it exists. On
17 the other hand, if you find beyond a reasonable doubt that the
18 defendant knowingly chose to participate in such a joint
19 undertaking, you may consider whether the defendant
20 deliberately avoided confirming otherwise obvious facts about
21 the purpose of that undertaking.

22 In sum, if you find that the defendant believed there
23 was a high probability that a fact was so and that the
24 defendant deliberately and consciously avoided learning the
25 truth of that fact, you may find that the defendant acted

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Rebuttal - Mr. Roos

1 knowingly with respect to that fact. Conversely, if you find
2 that the defendant actually believed the fact was not so, then
3 you may not find that he acted knowingly with respect to that
4 fact. You must judge from all the circumstances and all the
5 proof whether the government did or did not satisfy its burden
6 of proof beyond a reasonable doubt.

7 Good faith.

8 Let me advise you that a defendant's good faith is a
9 complete defense to the charge in this case. A doctor who in
10 good faith prescribes drugs in the regular course of a
11 legitimate professional practice is protected from conviction.
12 A doctor acts in good faith when he or she is engaged in the
13 honest exercise of professional judgment and acts with a
14 reasonable belief as to proper medical practice.

15 The burden of establishing criminal intent and lack of
16 good faith rests upon the government. A defendant is under no
17 burden to prove his or her good faith. Rather, the government
18 must prove bad faith and an intent to unlawfully distribute
19 oxycodone.

20 Second element -- membership.

21 If you find beyond a reasonable doubt that the
22 conspiracy existed, you must determine separately whether the
23 defendant was a member of that conspiracy. You must determine
24 not only whether the defendant participated in the conspiracy,
25 but also whether he did so knowingly and intentionally; that

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Rebuttal - Mr. Roos

1 is, he participated in the conspiracy with knowledge of its
2 unlawful purpose and with the specific intention of furthering
3 the charged objective that you have agreed was the goal of that
4 conspiracy.

5 "Intentionally" and "knowingly" defined.

6 The terms "intentionally" and "knowingly" mean that
7 you must be satisfied beyond a reasonable doubt that in joining
8 the conspiracy, if you find that the defendant did join the
9 conspiracy, the defendant knew what he was doing, that he took
10 the actions in question deliberately and voluntarily.

11 Knowledge is a matter of inference from the facts proved.

12 The defendant need not know the full extent of the
13 conspiracy or know all of the activities of the conspiracy, or
14 even who all of the coconspirators are. Indeed, a single fact
15 may be enough to bring the defendant within the membership of
16 the conspiracy, provided that the defendant was aware of the
17 conspiracy and knowingly associated himself with its criminal
18 objective.

19 Of course, mere association with a conspirator or a
20 mere presence at a place where a conspiracy is going on does
21 not make someone a member of the conspiracy. Nor is knowledge
22 without participation sufficient. What is necessary is that
23 the defendant participated with knowledge of the unlawful
24 object of the conspiracy and with intent to aid in the
25 accomplishment of that end.

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Rebuttal - Mr. Roos

1 If you find that the conspiracy existed and that the
2 defendant participated knowingly and intentionally in it, the
3 extent of the defendant's participation has no bearing on
4 whether or not he is guilty.

5 The fact that the defendant's participation in a
6 conspiracy was more limited than that of a coconspirator should
7 not affect your verdict. It is not necessary for the
8 government to show that the defendant received or anticipated
9 any financial benefit from his participation in the conspiracy,
10 so long as he participated in it in the way that I have
11 explained.

12 The question is, has the government proven beyond a
13 reasonable doubt that the defendant joined the conspiracy and
14 knowingly and intentionally participated in it with the
15 awareness of its basic purpose and as something he wished to
16 bring about?

17 Time of conspiracy.

18 If you find that the defendant was a knowing and
19 intentional participant in the conspiracy, the point at which
20 the defendant joined the conspiracy is not relevant to your
21 decision.

22 (Continued on next page)

23
24
25

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Charge

1 THE COURT: The defendant may join a conspiracy at any
2 point during its progress and be held responsible for all that
3 went on before he joined and all that occurs thereafter. With
4 respect to the time period for the conspiracy alleged in the
5 time, it is sufficient if you find that the defendant was a
6 member of the conspiracy for some time within the period of in
7 or around January 2012 through on or about June 2017.

8 In making this determination, you should bear in mind
9 that once you find that a person has knowingly and
10 intentionally participated in a conspiracy to violate the law
11 for some time within the period charged, he is presumed to
12 continue as a member of the conspiracy unless he proves that he
13 took affirmative steps to withdraw from the conspiracy or that
14 he conspiracy ended.

15 Liability for acts and declarations of coconspirators.
16 When people enter into a conspiracy to accomplish and unlawful
17 end, they become agents or partners of one another in carrying
18 out the conspiracy. In determining the facts, you may consider
19 any acts or statements made by any of the people that you find
20 to have been coconspirators even though such acts or statements
21 were not made in the defendant's presence or with the
22 defendant's knowledge.

23 Concluding instructions: Venue. In addition to
24 evaluating the elements of each offense, you must also consider
25 the issue of venue as to each offense. The government must

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Charge

1 establish what is called venue, which means that some act in
2 furtherance of that charge occurred in the Southern District of
3 New York. The Southern District of New York includes
4 Manhattan, the Bronx, Westchester, Dutchess, Putnam, Orange,
5 Sullivan, and Rockland counties, the waterways surrounding
6 those counties including the East River, the Hudson River, the
7 Arthur Kill, and Kill van Kull, and all the bridges that
8 traverse those waterways, including the Verrazano-Narrows
9 Bridge, which traverses the Narrows, the body of water
10 separating Staten Island and Brooklyn; and the Bayonne Bridge
11 which traverses the Kill van Kull, the body of water separating
12 Staten Island and Bayonne, New Jersey; the Goethals Bridge,
13 which transfers the Kill van Kull, the body of water separating
14 Staten Island and Elizabeth, New Jersey; and Outerbridge
15 Crossing, which traverses the Arthur Kill, the body of water of
16 separating Staten Island and Perth Amboy, New Jersey.

17 Venue is proven if any act in furtherance of the crime
18 you are considering occurred in the Southern District of New
19 York regardless of whether it was the act of the defendant or
20 anyone else. Furthermore, on the issue of venue only, the
21 government can meet its burden by a preponderance of the
22 evidence rather than proof beyond a reasonable doubt. That
23 means the government can meet its burden by showing that it was
24 more likely than not that an act in furtherance of a given
25 crime occurred in the Southern District of New York.

IC46TAY4

Charge

1 Uncalled witness equally available. There are several
2 people whose names you have heard during the course of the
3 trial, but who did not appear here to testify. Both the
4 government and the defendant have the same power to subpoena
5 witnesses to testify on their behalf. If a potential witness
6 could have been called by the government or by a defendant and
7 no one called the witness, then you may draw the conclusion
8 that the testimony of the absent witness might have been
9 unfavorable to the government or to the defendant or to both.
10 On the other hand, you may choose to draw no inference at all
11 from the failure of either side to call a witness.

12 You should remember that there is no duty on either
13 side to call a witness whose testimony would be merely
14 cumulative of testimony already in evidence or who would merely
15 provide additional testimony to facts already in evidence.

16 You should also remember that the law does not impose
17 on a defendant in a criminal case the burden or duty of calling
18 any witness or producing any evidence.

19 Law enforcement and government employee witnesses.
20 You have heard testimony of law enforcement officers and
21 employees of the government. The fact that a witness is
22 employed by the government does not mean that his or her
23 testimony is necessarily deserving of more or less
24 consideration or greater or lesser weight than that of any
25 other witness. It is legitimate for defense counsel to attack

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Charge

1 the credibility of a law enforcement or government witness like
2 any other witness. It is your decision after receiving all of
3 the evidence whether to accept or reject the testimony of the
4 witness and to give that testimony whatever weight you find it
5 deserves.

6 Expert witness. You have heard expert testimony from
7 Dr. Christopher Gharibo. An expert is someone who by education
8 or experience has acquired learning or experience in a
9 specialized area of knowledge. Such a witness is permitted to
10 give his opinions as to relevant matters in which he is
11 qualified as an expert and give his reasons or his opinions.
12 You should consider the expert opinion that was received in
13 evidence and give it as much or as little weight as you think
14 it deserves. If you decide that the opinion of an expert was
15 not based on sufficient education or experience or on
16 sufficient data or if you conclude that the trustworthiness or
17 credibility of the expert is questionable for any reason or if
18 the opinion of the expert was outweighed in your judgment by
19 other evidence in the case, then you may discard the opinion of
20 the expert entirely or in part.

21 On the other hand, if you find that the opinion of the
22 expert is based on sufficient data, education, and experience
23 and the other evidence does not give you any reason to doubt
24 his conclusions, you may rely on his testimony in whole or in
25 part.

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Charge

1 You should not, however, accept a witness's testimony
2 merely because he is an expert nor should you substitute it for
3 your own reason, judgment and common sense.

4 Persons not on trial or not indicted. You may not
5 draw any inference favorable or unfavorable towards the
6 government or the defendant from the fact that any person other
7 than the defendant is not on trial here. You may not speculate
8 as to the reasons why other persons are not on trial. Those
9 matters are wholly outside your concern and have no bearing on
10 your function as jurors.

11 Cooperating witness testimony. You also heard from
12 witnesses who testified they were involved in criminal conduct
13 and have subsequently pled guilty pursuant to what is called a
14 cooperation agreement with the government. Your concern is
15 whether a witness has given truthful testimony in court.
16 Whether or not you approve of the use of cooperating witnesses
17 to detect and investigate unlawful activities is not to enter
18 into your deliberations in any way. The government sometimes
19 must rely on the testimony of witnesses who have pleaded guilty
20 and are cooperating. Indeed, the testimony of a single
21 accomplice witness may be enough in itself for conviction if
22 you believe that the testimony establishes guilt beyond a
23 reasonable doubt.

24 You should scrutinize and view with caution the
25 testimony of any witness who has signed a cooperation

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Charge

1 agreement.

2 In doing so, you should ask yourself whether the
3 witness would benefit more from lying or by telling the truth.
4 Was his testimony made up in any way because he believed or
5 hoped he would receive favorable treatment by testifying
6 falsely? Or did he believe that his interest would be best
7 served by testifying truthfully? If you believe that the
8 witness was motivated by hopes and personal gain, was the
9 motivation one that would cause him to lie or was it one that
10 would cause him to tell the truth? Did the motivation color
11 his testimony?

12 In sum, you should look at all of the evidence in
13 deciding what credence and what weight, if any, you'll want to
14 give to the cooperating witness.

15 Witnesses who pled guilty. You have heard testimony
16 from a witness who pled guilty arising out of the same facts as
17 this case. You are to draw no conclusions or inferences of any
18 kind about the guilt of the defendant on trial here from the
19 fact that a witness pled guilty to similar charges or unrelated
20 charges. A decision of a witness to plead guilty is his own
21 personal decision. It may not be used by you in any way as
22 evidence against or unfavorable to the defendant on trial here.

23 Nonprosecution agreements. You have heard the
24 testimony of individuals who entered into nonprosecution
25 agreements with the government. What this means is that the

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Charge

1 testimony of the witness may not be used against him in any
2 criminal case unless he commits the crime of perjury or
3 otherwise fails to comply with the nonprosecution agreement
4 with the government.

5 The government is permitted to make these kinds of
6 promises and is entitled to call as witnesses people to whom
7 such promises are given. The fact that the government as
8 agreed not to prosecute a witness does not disqualify him or
9 her from testifying and does not preclude you from accepting
10 that testimony as true. You may convict the defendant on the
11 basis of such a witness's testimony alone if you find that the
12 testimony proves the defendant guilty beyond a reasonable
13 doubt.

14 I must also caution you that it is no concern of yours
15 why the government made an agreement with a particular witness.
16 Your sole concern is whether the witness has given truthful
17 truthful testimony here in this courtroom before you.

18 The testimony of a witness who has entered into a
19 nonprosecution agreement with the government like that of a
20 cooperating witness should also be examined by you with greater
21 care. You should scrutinize it closely to determine whether or
22 not it is colored in such a way as to place guilt upon the
23 defendant in order to further the witness's own interests.

24 Preparation of witnesses. You have heard evidence
25 during the trial that witnesses have discussed the facts of the

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Charge

1 case and their testimony with the lawyers before the witnesses
2 appeared in court.

3 Although you may consider that fact when you are
4 evaluate witness's credibility, I should tell you there is
5 nothing either unusual or improper about a witness meeting with
6 lawyers before testifying so that the witness can be aware of
7 the subjects he will be questioned about, focus on those
8 subjects, and have the opportunity to review relevant exhibits
9 before being questioned about them. Such consultation helps
10 conserve your time and the Court's time. In fact, it would be
11 unusual for a lawyer to call a witness without such
12 consultations.

13 Again, the weight you give to the fact or the nature
14 of the witness's preparation or his or her testimony and what
15 inferences you draw from such preparation are matters
16 completely within your discretion.

17 A defendant's right not to testify. David Taylor did
18 not testify in this case. Under our Constitution, a defendant
19 has no obligation to testify or to present any evidence because
20 it is the government's burden to prove guilt beyond a
21 reasonable doubt. That burden remains with the government
22 throughout the entire trial. A defendant is never required to
23 prove that he is innocent. You may not attach any significance
24 to the fact that a defendant did not testify. No adverse
25 inference against him may be drawn by you because he did not

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Charge

1 take witness stand. You may not consider this in any way in
2 your deliberations.

3 Similar acts. You have heard evidence that the
4 defendant engaged in conduct similar in nature to the contact
5 charged in the indictment. Let me remind you that the
6 defendant only is on trial for committing the conspiracy
7 alleged in the indictment. Accordingly, you may not consider
8 this evidence as similar acts as substitute for prove that the
9 defendant committed the crime charged. Nor may you consider
10 this evidence that the prove that the defendant has criminal
11 personality or bad character. This evidence was admitted for a
12 more limited purpose and you may consider it for that purpose
13 only.

14 If you determine that the defendant committed the acts
15 charged in the indictment and the similar acts as well, then
16 you may but you need not draw an inference that in doing the
17 acted charge the in the indictment the defendant acted
18 knowingly and intentionally and not because of some mistake,
19 accident or other reasons.

20 Nevertheless, the evidence of similar conduct is to be
21 considered by you only for the purpose for which it was
22 admitted and not for any other purposes. Specifically, you may
23 not consider it as evidence a that the defendant is bad
24 character or has a propensity to commit crime. Particular
25 investigative techniques not required. Techniques used by the

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Charge

1 government in deciding whether the government has met its
2 burden of proof because you should look to all of the evidence
3 or lack of evidence in deciding whether the defendant is
4 guilty. However, you are also instructed that there is no
5 legal requirement that the government use any specific
6 investigative techniques to prove its case whether you approve
7 or disapprove of various law enforcement techniques is not the
8 question. You should determine whether or not based on the
9 evidence or lack of evidence the defendant's guilt has been
10 proven beyond a reasonable doubt.

11 Use of evidence obtained pursuant to search. You have
12 heard testimony about evidence seized and searched conducted by
13 law enforcement officials. Evidence obtained from these
14 searches was properly admitted and may be properly considered
15 by you. Whether you prove or disapprove of how it was obtained
16 should not enter into your deliberations. You must therefore,
17 regardless of your personal opinions, give this evidence full
18 consideration along with all the other evidence in determining
19 whether the government has proved the defendant's guilt beyond
20 a reasonable doubt.

21 Use of recordings and transcripts. The government has
22 offered evidence in the form ever recorded conversations and
23 transcripts of those conversations. Whether you approve or
24 disapprove of the recording of these conversations may not
25 enter into your deliberations. I instruct you that the

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Charge

1 recordings were made in a lawful manner and that no one's
2 rights were violated and that this evidence was properly
3 admitted at this trial. You must therefore regardless of any
4 personal opinions consider this evidence as you would any other
5 evidence in this case and make your determination as to its
6 meaning and significance, if any, in evaluating whether the
7 government has proven beyond a reasonable doubt the guilt of
8 the defendant. The transcripts recording were provided to you
9 as aides. The recordings themselves are the evidence. If you
10 wish to view or hear any of the recordings with transcripts,
11 they will be made available to you.

12 Stipulations. Stipulations have been entered into
13 relating to various facts in this case. A stipulation of fact
14 is an agreement between the parties that a certain fact is
15 true. You must regard such agreed facts as true. You have
16 also heard evidence in the form of stipulations of testimony.
17 A stipulation of testimony is an agreement even among the party
18 if called witness would have given certain testimony. You must
19 accept as true a fact that the witness would have given the
20 testimony. However, it is for you to determine the
21 significance of that testimony.

22 Deliberations of jury. Presumption of innocence and
23 the burden of proof. The defendant has pled not guilty to the
24 charges as a result the burden is on the government to prove
25 guilt beyond a reasonable doubt. This burden never shifts to a

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Charge

1 defendant and never imposes upon the defendant the burden or
2 duty of testifying calling any witnesses or locating or
3 producing any evidence. The law presumes the defendant is
4 innocent. This presumption of innocence alone is sufficient to
5 acquit the defendant. This presumption was with the defendant
6 when the trial began and remains with the defendant unless and
7 until you're convinced that the government has proven the
8 defendant's guilt beyond a reasonable doubt.

9 Punishment is not to be considered by the jury. You
10 should not consider the question of possible punishment of the
11 defendant in determining if he is guilty of the crimes charged.
12 Sentencing is exclusively the function of the Court. It is not
13 your concern and you should not give any consideration to that
14 issue in deciding what your verdict will be. Therefore, I
15 instruct you not to consider punishment or possible punishment
16 at all in your deliberations in this case.

17 Simply or prejudice. You are not to be swayed by
18 sympathy or principle. You are to be guided solely by
19 the evidence in this case. It is for you alone to decide
20 whether the government has proven the defendant is guilty of
21 the crime charged solely on the basis of the evidence and
22 subject to the law as I give it to you. If you have a
23 reasonable doubt as to the defendant's guilt, you should not
24 hesitate to acquit the defendant. On the other hand, if you
25 should find that the government has met its burden of proving

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Charge

1 the defendant's guilt beyond a reasonable doubt, you should not
2 hesitate because of sympathy or any other reason to render a
3 verdict of guilty.

4 Request to see testimony and Exhibits. You are about
5 to go into the jury room and begin your deliberations. If
6 during those deliberations you want any of the exhibits or any
7 specific portions of testimony, the exhibit will be provided to
8 you. The testimony will be provided to you. Please
9 remember it is not always easy to locate testimony. It is to
10 being as specific as you possibly can be in any request for
11 testimony. A vague or overbroad request for testimony can lead
12 to delays.

13 Selection of a foreperson and communications with the
14 Court. The foreperson will preside over your deliberation and
15 will be the spokesperson in court. This is done simply for the
16 convenience. It gives him or her no greater authority, and his
17 or her vote has no greater weight than any other jurors. You
18 are free to select any foreperson you like. Any communication
19 with the Court is to be made to me in writing, signed by your
20 foreperson and given to one of the marshals. I will respond to
21 any questions or requests you have as promptly as possible
22 either in writing or by having you return to the courtroom so I
23 can speak with you in person.

24 The verdict must be unanimous. Your function now is
25 to weigh the evidence in this case and to determine if the

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Charge

1 government as proven the crimes charged. You must base your
2 verdict solely on the evidence or lack of evidence and these
3 instructions as to the law. You're obligated to follow the law
4 as I instruct you whether you agree or disagree with a
5 particular law in question.

6 The verdict must represent the considered judgment of
7 each juror. In order to return a verdict, it is necessary that
8 each juror agrees to it. Your verdict must be unanimous. You
9 should consult with one another and deliberate with a goal of
10 reaching an agreement. Each of you must decide the case for
11 himself or herself, but do so only after impartial discussion
12 and consideration of all of the evidence with your fellow
13 jurors. Do not hesitate to re-examine your own views and
14 change your opinion if convinced it is erroneous; but do not
15 surrender your honest conviction as to the weight or effective
16 evidence solely because of the opinion of your fellow jurors.

17 Remember, you are the judges of the facts. Your sole
18 interest is to determine whether the government has proven the
19 crime charged beyond a reasonable doubt. If you are divided,
20 do not report on how the vote stands. When you reach a
21 verdict, do not report what it is until you have been
22 instructed to do so. In conclusion, ladies and gentlemen, I am
23 sure that if you listen to the views of your fellow jurors and
24 if you apply your own common sense, you will reach a fair
25 verdict here. Remember, that your verdict must be rendered

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Charge

1 without fear, without favor, and without prejudice or sympathy.
2 I have prepared a verdict form for you to use and you should
3 record the verdict you reach unanimously on it.

4 Let me just speak with counsel at side bar.

5 I will be right back.

6 (Continued on next page)

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Charge

1 (In robing room)

2 THE COURT: I made a few edits on the fly.

3 Any objection to my reading of the instructions by the
4 government?

5 MR. RODRIGUEZ: No, your Honor.

6 THE COURT: By the defendant?

7 MR. CARNESI: No, your Honor.

8 THE COURT: We'll go ahead and we'll have the marshal
9 sworn in.

10 Let me go through the corrections that I noted.

11 On several pages it mentioned "crimes" that the
12 defendant was charged with instead of "crime." I made that
13 singular instead of plural. We'll make those corrections.

14 On page 10 it had "offenses." I made that "offense."
15 It also had "crimes" and I made that "crime."

16 On page 21: You may not draw any inference, favorable
17 or unfavorable, toward the government or the defendants. I
18 made that singular, "the defendant."

19 Page 27: It is for you alone to decide whether the
20 government has proven that the defendant is guilty of the
21 crimes charged. I made that "crime."

22 On page 29, third paragraph: You're sole interest is
23 to determine whether the government has proven the crimes
24 charged. I made that "crime."

25 We'll make those corrections. I will have the marshal

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Charge

1 sworn.

2 Let me check with counsel on how you want to do this.
3 This is my intention: I will have the alternate jurors go into
4 the jury room and grab their belongings and come back out and
5 then I will tell them that they are still on jury duty but
6 we're going to allow them to come home but they may not discuss
7 this case with anyone else. They may not do any independent
8 research. It may be necessary at some point that we might need
9 to substitute them for one of the deliberating jurors, but my
10 deputy will be in touch with them and then we let them go. My
11 plan will be to let the other jurors start deliberating.

12 Any objection to that by the government or defense?

13 MR. RODRIGUEZ: No, your Honor.

14 MR. CARNESI: No, your Honor.

15 THE COURT: Anything else we need to do?

16 MR. ROOS: No, your Honor.

17 THE COURT: I will let the jurors know. I can let
18 them know that we'll give them a copy of the instructions as
19 soon as they are ready, or I can be silent on it. What are the
20 parties druthers? I can be silent and they will get it when
21 they get it.

22 Government and defense, fine?

23 MR. RODRIGUEZ: That's fine.

24 MR. CARNESI: That's fine.

25 (Continued on next page)

IC46TAY4

Charge

1 (In open court; jury present)

2 THE COURT: I will ask my wonderful and talented
3 deputy to swear the marshal.

4 THE DEPUTY CLERK: Please raise your right hand.

5 (Marshal sworn)

6 THE COURT: Now, I am going ask the four alternate
7 jurors to go into the jury room and retrieve your belongings
8 and come back out.

9 (Pause)

10 THE COURT: You can stand over there. Step over
11 closer to the television.

12 So for the four alternate jurors, here is what is
13 happening: You are not dismissed from jury duty. You are not
14 finished with jury duty, but I am going to allow you to go home
15 and go on about your usual course of business. It may be
16 necessary to substitute you for one of regular deliberating
17 jurors.

18 Do not discuss this case with anyone. Don't allow
19 anyone to discuss this case with you. Don't conduct any
20 independent research about any of the issues or the parties or
21 the locations in this case. My deputy will be in touch with
22 you later if we need to have you substitute for one of the
23 deliberating jurors. And if not, my deputy will be in touch
24 with you if your duty ends at some point.

25 Thank you very much. Again, don't discuss this case

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Charge

1 with anyone else or let anyone discuss this with you.

2 (Pause)

3 For the 12 jurors, you are going to begin your
4 deliberations shortly. I will give you another instruction.
5 Once you start your deliberations, you are free to discuss this
6 case with each other obviously but do not discuss this case
7 with anyone else outside of the jury room. If someone needs to
8 step outside to take a smoke break or a walk, you have to stop
9 your deliberations and you may not resume them until unless all
10 of them are together in the jury room.

11 You may begin your deliberations.

12 (Jury excused)

13 (Continued on next page)

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Charge

1 THE COURT: I think defense counsel you may still have
2 the printed out version of the verdict sheet.?

3 MR. CARNESI: Yes, I do.

4 THE COURT: Hand that to the government and make sure
5 again we're working on the right copy.

6 Everyone can sit down.

7 We'll make that Court Exhibit 1 and we'll send that
8 into the jury.

9 Any objection to that going in?

10 MR. CARNESI: No, your Honor.

11 MR. RODRIGUEZ: No, your Honor.

12 THE COURT: My law clerk will make those minor
13 corrections in the instructions and we'll make the jury
14 instructions Court Exhibit 2 and then we'll have one for each
15 juror.

16 It will be A through?

17 THE DEPUTY CLERK: A through L, Judge.

18 THE COURT: A through L.

19 Any objection to that?

20 MR. CARNESI: No.

21 THE COURT: What we'll do is make those corrections.
22 We'll have that brought up to counsel to make sure that
23 conforms with everybody.

24 Anything else from the government or defense at this
25 point?

IC46TAY4

Charge

1 MR. RODRIGUEZ: No, your Honor.

2 MR. CARNESI: No, your Honor.

3 THE COURT: We'll make those corrections.

4 See you soon.

5 (Recess pending verdict)

6 THE COURT: Okay. Let me ask counsel to look. We
7 made the changes on the jury instructions. Have counsel look
8 at that and if it is okay and if so we'll send in the
9 instructions to all of the jurors.

10 MR. RODRIGUEZ: Everything is fine from the
11 government.

12 MR. CARNESI: It's fine with me, your Honor.

13 THE COURT: Both sides consent to sending those
14 instructions into the jury?

15 MR. RODRIGUEZ: Yes, your Honor.

16 MR. CARNESI: Yes, your Honor.

17 THE COURT: We have those marked A through L?

18 THE DEPUTY CLERK: Yes, Judge.

19 THE COURT: Send them in.

20 Counsel, while we're waiting on the jury, you don't
21 have to sit here in the courtroom. Just don't go too far away.
22 My deputy has your cell phone numbers if you want to step
23 outside and walk around a little bit. If you haven't heard
24 anything from us, definitely come back by 3:00 in any event.

25 MR. RODRIGUEZ: Yes, your Honor. Thank you.
(Recess pending verdict)

IC46TAY4

Charge

1 THE COURT: It's 3:00. I will bring the jury out and
2 tell them that we're going to dismiss them for the day, remind
3 them again not to discuss the case with anyone else, not to
4 conduct any independent research, and have them come back here
5 Thursday at 9:30. I will remind them that they will go
6 straight to the jury room but they cannot start their
7 deliberations until all of the jurors have arrived.

8 Any objection to that by government or the defense?

9 MR. CARNESI: No, your Honor.

10 MR. RODRIGUEZ: No, your Honor.

11 THE COURT: If the jurors come out here and start
12 jumping up and down, then we'll deal with that then.

13 Let's bring the jury in.

14 (Continued on next page)

IC46TAY4

Charge

1 (In open court; jury present)

2 THE COURT: It's 3:00. We're going dismiss you for
3 the day. I will ask you to get here at 9:30 on Thursday.
4 Remember we're not sitting tomorrow. On Thursday you go
5 straight to the jury room but you may not start your
6 deliberations until everyone is there. When everyone has
7 arrived in the jury room, you may resume your deliberations.
8 Again, as always do not discuss this case with anyone else.
9 Don't allow anyone to discuss it with you except when you are
10 all assembled together in the jury room. Don't conduct any
11 independent research regarding any of the issues, parties or
12 locations in this case.

13 Have a wonderful evening. Again, Thursday you will
14 come here. You will not need to come out but you will go
15 straight to jury room and resume your deliberations.

16 See you on Thursday.

17 (Jury excused)

18 (Continued on next page)

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IC46TAY4

Charge

1 (In open court; jury not present)

2 THE COURT: I didn't see any jurors making any frantic
3 gestures. Did anyone else?

4 MS. FLETCHER: I am loathe to say what I heard jurors
5 say in the courtroom. We heard two jurors discuss amongst
6 themselves whether they should ask the Court something and they
7 said it is never too late and then they walked out.

8 THE COURT: Defense counsel?

9 MR. CARNESI: No.

10 THE COURT: In light of what the government said, we
11 can ask counsel to stay a few minutes.

12 MS. FLETCHER: I presume the jurors are already on
13 their way out of the building.

14 THE COURT: Just to be safe let's have counsel hang
15 out another three minutes. My deputy has your contact
16 information. It's not necessary for counsel to get here at
17 9:30. I think that the government's office is relatively close
18 to here unless you moved offices or you are at some satellite
19 office.

20 Mr. Carnesi, how far is your office from here?

21 MR. CARNESI: Far enough that I will be here if not
22 9:30, 10:00.

23 THE COURT: Let's have counsel check in either in
24 person or by telephone with my deputy at, say, 10:00.

25 MR. CARNESI: Thank you.

IC46TAY4

Charge

1 THE COURT: In light of what counsel for the
2 government just said that they believe that they overheard
3 jurors saying, it doesn't seem it is necessary or appropriate
4 for to us make any inquiry, but let me just check in with
5 counsel.

6 Counsel for government or defense?

7 MR. CARNESI: I have no request, Judge.

8 MR. RODRIGUEZ: Or the government.

9 THE COURT: No request for me to do anything about
10 that at all, counsel for the government and defense?

11 MR. CARNESI: No, your Honor.

12 MR. RODRIGUEZ: Correct, Judge.

13 THE COURT: See you.

14 (Adjourned to December 6th, 2018, 9:30 a.m.)
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